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Jul 31 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Colleton County
Court of Common Pleas

The Honorable Edgar Dickson, Circuit Court Judge

Appellate Case No. 2026-000508

LESLIE TWYMAN..Petitioner,

v.

STATE OF SOUTH CAROLINA..Respondent.

APPENDIX

CHELSEY F. MARTO
The Law Office of Chelsey F. Marto, LLC
S.C. Bar # 104191

Post Office Box 8795
Columbia, S.C. 29201
(864) 404-5583

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW
Senior Assistant Deputy
Attorney General
KYLEE KANEALEY
Assistant Attorney General
1000 Assembly Street
Columbia, SC, 29201
(803) 734-3737

ATTORNEYS FOR RESPONDENT

VOLUME II OF II **PAGES 501-629**

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APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Leslie Twyman #234787, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Leslie Twyman
Applicant

SWORN or affirmed to and subscribed before me this 18th day of June, 2019.

Stephanie Marshall
Notary Public

My Commission Expires: May 12, 2021

STEPHANIE MARSHALL
NOTARY PUBLIC
SOUTH CAROLINA

2019 JUN 24 AM 10 43
COLLETON COUNTY
~~FAMILY COURT~~
Common Pleas

Revised 3/2003

ATTACHMENT _ A

Answer to question 10(b)

Pursuant to Pruitt v. State, 310 S.C. 254 (1992) I believe that I am entitled to raise any issue that was filed at my first PCR hearing and were not included in the Order of Dismissal.

Answer to 11(a)

My first PCR counsel failed to file my 59(e) and an appeal. See Exhibit - A.

Answer to 11(b)

The Order of Dismissal failed to rule upon the issues raised at my PCR hearing. See Ex A,B1, B2, C, and D

Exhibits A

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF TRISTAN M. SHAFFER**
COUNTY OF GREENWOOD)
)

I, Tristan M. Shaffer, after having been duly sworn hereby attests that the following is true:

1. I was appointed to represent Leslie Twyman for his post-conviction relief (PCR) case 2014-CP-15-0127 (hereinafter the PCR).
2. An evidentiary hearing was scheduled on October 29, 2014.
3. It appears that an Order of Dismissal was filed on December 21, 2015.
4. The State has indicated that is served me with the Order of Dismissal on March 21, 2016.
5. Although I do not recall receiving the Order of Dismissal, I have located a copy of the Order of Dismissal in my office. Therefore, I believe that I received the Order of Dismissal in 2016.
6. I inadvertently failed to file a motion to alter or amend and a notice of appeal.
7. This mistake came to my attention on May 20, 2019.
8. Counsel believes that the Order of Dismissal in this case is invalid as it did not make adequate findings of fact or conclusions of law. *See Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992).
9. I believe Mr. Twyman never knowingly and intelligently waived his right to appeal.

By signing below, I hereby affirm that the statements made in this affidavit are true.

Tristan M. Shaffer

SWORN TO AND SUBSCRIBED BEFORE ME

This 4th day of June, 2019

Notary Public for South Carolina
My Commission Expires: 1/22/2025

2019 JUN 24 AM 10 42
COLLETON COUNTY
~~FAMILY COURT~~
Common Pleas

Exhibits B1

ALAN WILSON
ATTORNEY GENERAL

December 16, 2015

The Honorable Patricia C. Grant
Clerk of Court, Colleton County
PO Box 620
Walterboro, SC 29488-0028

Re: Leslie Twyman #345787 v. State of South Carolina
2014-CP-15-0127

Dear Ms. Grant:

Enclosed please find the signed original **Order of Dismissal** in the above captioned case for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737.

Sincerely,

for J. Rutledge Johnson
Assistant Deputy Attorney General

JRJ/cm

cc: Tristan M. Shaffer, Esq.

Exhibits B2

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Leslie Twyman, #345787,

Applicant,

v.

State of South Carolina,

Respondent.

2014-CP-15-0127

ORDER OF DISMISSAL

2015 DEC 21 AM 8:42
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 11, 2014. Respondent made its Return on August 21, 2014. An evidentiary hearing into the matter was convened on October 29, 2014, at the Beaufort County Courthouse. Tristan M. Shaffer, Esquire represented the Applicant. Ashleigh Wilson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Susan Hackett, Esquire and Harris Beach, Esquire also testified. This Court had before it a copy of the records of the Colleton County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the October 2010 and January 2011 terms of the Colleton County Grand Jury for criminal sexual conduct- first degree (2010-GS-15-0849 Count 1) and criminal sexual conduct- third degree (2010-GS-15-0849 Count 2). The Applicant was represented by Harris Beach, Esquire.

The Applicant proceeded to trial and was convicted. On April 20, 2011, the Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of twenty-five (25) years for criminal sexual conduct- first degree and ten (10) years for criminal sexual conduct- third degree. The sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Twyman, No. 2013-UP-325 (S.C. Ct. App. July 17, 2013). The Remittitur was issued on August 9, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
   a. Counsel only renewed motion for directed verdict on CSC 3rd and not CSC 1st.
   b. Counsel should have objected to solicitor leading of witness.
2. Ineffective assistance of appellate counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records and has read the trial transcript, all of which assists the Court in judging the witnesses' credibility.

The Court finds that Applicant has failed to meet his burden of proof in establishing ineffective assistance of counsel. The Applicant was appropriately charged and indicted, and ultimately convicted, for CSC 1st and CSC 3rd based on the allegations that he lured the mentally handicapped victim from her residence under false pretenses and committed a sexual battery against her. Additionally, this Court finds trial counsel's testimony credible and does not find Applicant's testimony credible. Trial counsel's pre-trial investigation and discussions with Applicant were reasonable in the circumstances, and did not fall below professional norms. The Court finds that counsel competently advised Applicant of the charges and possible sentences. The Court finds that counsel's performance did not fall below professional standards of reasonableness with regard to the manner in which he conducted his defense.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

December 15, 2015
Orangeburg, South Carolina

Exhibits C

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Leslie Twyman, #345787,
Applicant,

vs.

State of South Carolina,
Respondent.

Case No.: 2014-CP-15-0127

RULE 59(e) MOTION TO ALTER OR AMEND

NOW COMES the Applicant in the above-captioned action, submitting his pro-se Motion to Alter or Amend this Court's Order of Dismissal dated December 15, 2015, and filed December 21, 2015. The Applicant received written notice of entry of the Order of Dismissal on Saturday, May 11, 2019. Pursuant to Rule 59(e), SCRCP, the Applicant now asks this Court to reconsider its Order of Dismissal because it does not specifically addresses the issues raised in the PCR application and at the hearing. The Applicant submits that the Order of Dismissal is erroneous for the following reasons:

The Order of Dismissal did not make any specific findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80, to whether trial counsel was ineffective for:

1) Making a statement to Mr. Twyman regarding the plea bargain of six (6) years, where trial counsel stated that if Applicant didn't take the six years and went to trial and lose, that once the higher courts got it the case would be thrown out.

2) The Order of Dismissal failed to address why counsel failed to object Ms. Wilder's statement about seeing semen in her daughter's vagina, where Ms. Wilder was not qualified to make a factual statement on such an issue.

3) The Order of Dismissal did not address why trial counsel withdrew the critical question to Ms. Wilder about her daughter and her problem telling the truth? Counsel knew this question should have been answered because it went towards the credibility of the victim. tr. trans., pg. 109, line 24 - pg. 110, lines 1-10.

4) The Order of Dismissal failed to address why trial counsel failed to object Officer Craven's testimony that the victim didn't make eye contact because she was ashamed which is common.

5) The Order of Dismissal failed to address why trial counsel failed to object to the prosecution eliciting from Ms. Jodi Taylor information concerning Mr. Twyman's refusal to give a statement to police.

6) The Order of Dismissal failed to address why trial counsel ineffectively moved for a directed verdict on the lesser offense of csc 3rd but failed to move for a directed verdict on the greater offense of csc first. tr. trans., pg. 259, line 21-25 - pg. 260, lines 1-6.

7) The Order of Dismissal failed to address why trial counsel to present the "Narrative Summary of Abuse" DVD to the Jury when asked by the Applicant, knowing that it would given different statement than the one the alleged victim made prior to trial.

CONCLUSION

For all of the foregoing reasons, the Applicant now ask this Honorable Court to reconsider its prior decision to deny the Applicant's request for post-conviction relief. Pursuant to Rule 59(e), SCRCP, the Applicant asks that this Court alter or amend its previous Order, reverse the Applicant's judgments and sentences and grant him a new trial.

This pro-se pleading was prepared by the Applicant and filed for the Court's consideration by the Applicant's court-appointed counsel.

Respectfully submitted,

Tristan M. Shaffer
Attorney at Law
225 Columbia Ave.
Chapin, SC 29036

Attorney for Applicant

Exhibits - D

LESLIE TWYMAN #345787

McCI F-4 283-A
386 Redemption Way
McCormick, South Carolina 29899

January 21, 2016

Tristan M. Shaffer, Esquire
Shaffer Law Firm
P.O. Box 1161
Irmo, SC 29063

RE: DNA Application
Leslie Twyman, Applicant v. State of South Carolina, Respondent
Case No.: 2014-CP-15-00127

Dear Mr.Shaffer:

Congratulation on your move to your own law firm, I hope you do well. The reason for this letter is to inquire of you as to whether or not you have received the copy of the DNA Application that I mailed to your prior address in Charleston County, I received a letter in response advising me that you've moved to another office and your new address was provided, I was also advised that the copy of the DNA Application was sent to your office for filing with the Clerk's Office because you're the attorney assigned to my case.

I would like to take this opportunity to ask you to please be sure that all the important issues raised at my PCR hearing and in my PCR application are addressed in the Order of Dismissal when the judge decides to issues his order denying me PCR. If all the issues are not addressed, please file a Rule 59(e) motion asking the PCR court to address any omitted issue as so that issue can be preserved for appellate review.

If you have received the DNA Application, please file it and forward me a clocked stamped copy. Good luck to you in your new office and I appreciate any and all the assistance that you render in this very important matter.

Sincerely,

Leslie Twyman

cc: Personal file

LESLIE TWYMAN #345787

McCI F-4 283-A
386 REDEMPTION WAY
MCCORMICK, SOUTH CAROLINA 29899

NOVEMBER 4, 2016

THE HONORABLE DANIEL E. SHEAROUSE, CLERK
SOUTH CAROLINA SUPREME COURT
POST OFFICE BOX 11330
COLUMBIA, SC 29211

RE: LESLIE TWYMAN V. STATE OF SOUTH CAROLINA
POST-CONVICTION RELIEF CASE NO.: 2014-CP-15-00127
FINAL DECISION

TO THE HONORABLE DANIEL E. SHEAROUSE:

SIR, I'M WRITING THIS LETTER IN REFERENCE TO THE ABOVE ENTITLED MATTER IN HOPES OF YOU ASSISTING ME IN RECEIVING A FINAL DECISION IN MY POST-CONVICTION RELIEF ACTION.

I FILED MY INITIAL APPLICATION FOR POST-CONVICTION RELIEF DATED FEBRUARY 7, 2014 IN THE COURT OF COMMON PLEAS IN COLLETON COUNTY. AN EVIDENTIARY HEARING WAS HELD ON OCTOBER 29, 2014 IN BEAUFORT COUNTY.

FOLLOWING THE P.C.R. HEARING I CONTACTED MY PCR ATTORNEY, TRISTAN M. SHAFFER, ESQUIRE, VIA THE UNITED STATES MAIL, ASKING HOW LONG IT WOULD BE BEFORE THE COURT MAKES A DECISION IN MY CASE. ATTORNEY RESPONSE, IN A LETTER DATED SEPTEMBER 11, 2015, WAS THAT "IT APPEARS THAT THE JUDGE IS GOING TO RULE AGAINST US" AND THAT "IT MAY TAKE A COUPLE OF MONTHS". IT HAS NOW BEEN OVER TWO (2) YEARS SINCE MY P.C.R. HEARING AND I'VE NOT GOTTEN A RULING ON THE ISSUES RAISED IN MY APPLICATION AND AT THE HEARING.

I'VE ATTEMPTED RECENTLY TO CONTACT THE ATTORNEY GENERAL'S OFFICE AND MY P.C.R. ATTORNEY, BUT MY EFFORTS WERE TO NO AVAIL, I DID NOT GET A RESPONSE FROM EITHER OFFICE.

I NEED AN ORDER ISSUED IN THIS MATTER AS SO I CAN PROCEED TO THE NEXT STEP IN MY LEGAL CASE, IT DOESN'T MATTER WHETHER THE DECISION IS FAVORABLE OR ADVERSE, I NEED THE P.C.R. JUDGE TO ISSUE HIS ORDER.

· Exhibits D

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

November 15, 2016

Tristan Michael Shaffer, Esquire
225 Columbia Avenue
Chapin, SC 29026

Re: Leslie Twyman #345787

Dear Mr. Shaffer:

This will acknowledge a letter from Mr. Twyman dated November 4, 2016. Since you are counsel of record for Mr. Twyman, we are forwarding you a copy of his letter for any assistance you may be able to give him.

Very truly yours,

Daniel E. Shearouse
bfs

CLERK

/bs

Enclosure

CC: Mr. Leslie Twyman #345787

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Leslie Twyman, SCDC# 345787, Applicant,	)	Case No.: 2019-CP-15-0484
v.	)	**RETURN TO THE APPLICATION FOR POST-CONVICTION RELIEF** (Counsel Already Appointed)
State of South Carolina, Respondent.	)	

In response to the post-conviction relief application filed June 24, 2019 by Applicant Leslie Twyman, Respondent the State of South Carolina would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. On August 21, 2010, Applicant lured an eighteen-year-old woman with an IQ of 55 and developmental delays into a residence in Walterboro under false pretenses and proceeded to rape her. He was arrested shortly thereafter. The Colleton County Grand Jury subsequently indicted Applicant for first-degree criminal sexual conduct and third-degree criminal sexual conduct (mental defect, mental; incapability, etc.) (2010-GS-15-00849, Count 1 and Count 2). Harris S. Beach of the Colleton County Public Defender's Office represented Applicant. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case.

On April 18, 2011, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Applicant as indicted, and on April 20, 2011, Judge Buckner sentenced Applicant to imprisonment for twenty-five years for first-degree criminal sexual conduct and for ten years for third-degree criminal sexual conduct, with both sentences to be served concurrently.

Applicant's Direct Appeal

Applicant pursued a direct appeal and was represented on appeal by Appellate Defenders Elizabeth Franklin-Best and Susan B. Hackett from the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following instances of trial court error:

> I. The trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated."; and
>
> II. The trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. § 16-3-651(e) or (f).

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Leslie Twyman, Unpub. Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The remittitur was returned to the circuit court on August 9, 2013.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his first application for post-conviction relief on February 11, 2014. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
   a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct
   b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;
   a. On third-degree criminal sexual conduct, more to be amended later.

As requested relief, Applicant stated he was seeking a vacation or his conviction and sentences and/or a new trial and/or resentencing.

Respondent made its return on August 20, 2014, requesting an evidentiary hearing be held. An evidentiary hearing was held on October 29, 2014, before the Honorable Edgar W. Dickson, circuit court judge. Applicant was represented by Tristan Shaffer, Esquire. Trial counsel and appellate counsel Hackett both testified at the evidentiary hearing, as did Applicant. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and served on counsel for Applicant on March 1, 2016. Applicant did not file an appeal.

II. Current Application

In his second and current application for post-conviction relief, Applicant alleges he is entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). He also states he is entitled to raise any issues not adequately addressed in the order denying his first PCR and that his prior PCR counsel failed to file any necessary motions pursuant to Rule 59(e), SCRCP. Applicant attaches several exhibits to his post-conviction relief application, including unfiled *pro se* motion to alter or amend the order denying his first application, correspondence he sent prior PCR counsel Shaffer, an affidavit from prior PCR counsel Shaffer acknowledging that Shaffer failed to file any post-trial motions or appeals on Applicant's behalf, a letter Applicant sent the South Carolina Supreme Court, and the response from the Court.

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, the records from Applicant's first post-conviction relief matter, and this current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations Raised

Successive applications such as the one before this court are disfavored. S.C. Code Ann. § 17-27-90. However, here Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State. Austin provides for a belated appellate review of an initial post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application. Id. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But Austin "is limited to its particular factual situation." Aice, 305 S.C. at 452, 409 S.E.2d at 394.[1] Pursuant to *Austin*, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." Austin, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit

[1] Aice was issued in conjunction with *Austin*, limiting the reach of Austin and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." Id. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, Applicant asserts prior PCR counsel failed to file an appeal on his behalf and has presented an affidavit from prior PCR counsel stating such. Respondent therefore agrees Applicant is entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

However, Applicant also asserts that prior PCR counsel was ineffective for failing to properly ensure all issues raised in his prior post-conviction relief action were properly addressed in the order of dismissal. Recently, in Fishburne v. State, our Supreme Court remanded a matter back to the post-conviction relief court when it determined PCR counsel failed to ensure all issued were adequately addressed in the order of dismissal. Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), reh'g denied (Sept. 27, 2019) ("However, because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a part"s procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80. . . We remand to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order.")

At the present time, Respondent lacks sufficient information to admit or deny the allegation raised in this successive post-conviction relief action pertaining to whether the prior order addresses all claims and whether PCR counsel appropriately filed any requested motions on Applicant's behalf. Accordingly, and in light of Fishburne, Respondent requests an evidentiary hearing on this ground for relief.

IV. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Love* (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. General Denial

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Conclusion

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing to determine whether Applicant is entitled to Austin review and any other relief proper.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/Megan Harrigan Jameson
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

July 1, 2020.

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Leslie Twyman, # 345787	)	Case No.: 2019-CP-15-0484
Applicant,	)	
v.	)	Certificate of Service by Mail
State of South Carolina	)	
Respondent,	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to the Application for Post-Conviction Relief** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 1st Day of July, 2020.

Kaitlyn Slice
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON

Leslie Twyman,

Petitioner,

vs. Transcript of Record
2019-CP-15-00484

State of South Carolina,

Respondent.

July 20, 2022
Walterboro, South Carolina

B E F O R E:

The HONORABLE KRISTI F. CURTIS

A P P E A R A N C E S:

James Falk, Representing the Petitioner

Lauren Mims, Representing the Respondent

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

MS. MIMS: May it please the Court?

THE COURT: Yes, ma'am.

MS. MIMS: I'm Lauren Mims here on behalf the State of South Carolina. This is the post-conviction relief matter of Leslie Twyman pursuant to Austin v. State. The Colleton County Grand jury indicted applicant for first degree criminal sexual conduct and third degree criminal sexual. Harris Beach of the Colleton County Public Defender's Office represented applicant. Assistant solicitor Ben Shelton of the 14th Circuit Solicitor's Office prosecuted the case.

On April 18, 2011, applicant proceeded to a jury trial before the Honorable Perry M. Buckner, Circuit Court judge. The jury convicted applicant as indicted on April 20th. Judge Buckner sentenced applicant to imprisonment for 25 years for the first degree criminal sexual conduct, 10 years for the third degree criminal sexual conduct with both sentences to be served concurrently.

Applicant proceeded to appeal and was represented by appellant defendant Elizabeth Franklin Best on behalf of the South Carolina Commission of Indigent Defense, office the appellate defense.

Following brief oral argument, the South Carolina Court of Appeals affirmed applicant's conviction of the sentences and in unpublished opinion. Remittitur was returned to the circuit court on August 9, 2013.

Applicant filed his first application for post-conviction relief on February 11, 2014. In that application, applicant alleged he was being held in custody based upon ineffectiveness of trial counsel and ineffectiveness of appellate counsel.

As a request of relief, applicant stated he was seeking vacation of his conviction and sentences or a new trial and/or sentencing.

Respondent made its return August 20, 2014 and requested an evidentiary hearing. An evidentiary hearing was held on October 29, 2014, before the Honorable Edgar Dickson, Circuit Court judge. Applicant was represented by Tristan Shaffer, Esquire.

Trial counsel and appellate counsel both testified at the evidentiary hearing, as did applicant. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and sent to counsel and forwarded to applicant March 1, 2016. Applicant did not file an appeal.

It is our understanding today that the applicant will only be going forward on the Austin claim.

THE COURT: Is that correct, Mr. Falk?

MR. FALK: Yes, Your Honor. The problem is that my client is really in a situation where has no remedy for what happened. That he wanted a Rule 59(e) motion to have been filed after the PCR hearing. It's my client's position that the rule -- the order from the court was insufficient. It doesn't cover all the issues. And he doesn't want to be put in the situation if the case goes up on appeal, you know, appellate defense wants to argue things and they'll say that it's not covered by the order.

Mr. Shaffer will testify or show that the order that was prepared in this case is almost -- paragraph by paragraph is very similar to the actual order in Fishburne, which was the case where -- you know, they said in these cases you needed more adequate findings of fact.

My client is, I think, entitled to Austin relief, and there's actually an affidavit in the file here where Mr. Shaffer said he's also waiting for it. But we're still in the situation that he's going to go up with an order on appeal which is insufficient because his lawyer did not file a 59(e) motion after the order from the PCR court was entered.

THE COURT: Okay. And what's the State's position on his entitlement to an appeal from the denial of the PCR?

MS. MIMS: The State, we would consent to applicant being entitled to a belated appeal pursuant you Austin. However, we don't believe that it would be proper for the PCR court, Your Honor, to allow the order in the other PCR case to be redone based upon this PCR. I don't think that Your Honor has the jurisdiction to be able do so.

So we consent to an Austin on any other issue outside, including the issue of -- upon the 59(e), we don't think it's proper.

THE COURT: So, in other words, I can't send it back for a -- I can't send it back to Judge -- Dickson, was it?

MS. MIMS: Yes.

THE COURT: For him to rule on anything that was not addressed in the motion.

MS. MIMS: Right.

THE COURT: I think you're right about that, that all I can do is grant the appeal and let it go up.

Is that your understanding as well, Mr. Falk?

MR. FALK: Yeah. But you understand it's my client's argument that we're going to up on a defective order, that he wanted his counsel to, you know, ameliorate it somewhat by filing a 59(e) motion and make sure that all the issues that he felt were raised at the hearing would be covered on appeal.

I mean, as I said, this case will look just like Fishburne. It will not have the finding of fact, the conclusions of law in the order, and it did not address all the issue that were raised at the PCR hearing.

But I'm just saying -- I mean, I don't disagree that you don't have the authority to do anything with Judge Dickson's order. I doubt you even have the authority to allow him to file a belated 59(e) because I don't know if that exists.

But you understand my client's concern is that, you know, he's gone this far and he still might not get the remedy that he needs because we're going to get a deficient order on appeal.

MS. MIMS: And, correct me if I'm wrong, Mr. Falk, but, in Fishburne, I believe that the appellate court allowed -- remanded it back so an order could be filed, correct?

MR. FALK: That's right. I mean, it did do that, but, you know, we have to --

THE COURT: You have to jump through the hoops first.

MR. FALK: You got to jump through hoops.

THE COURT: And my feeling is that they're doing that more and more often, and have been pretty adamant that if it doesn't -- if an order doesn't address every issue raised, that they're going to send it back. And they're not going to sift through it themselves. They're going to send it right back. It seems like an increasing frustration.

So, again, I am fine to sign an order that he is entitled to the appeal of Judge Dickson's order denying PCR. I just don't think that there's any further relief that you can get at this point regarding a 59(e) motion.

MR. FALK: What's that?

THE COURT: Regarding a 59(e) motion.

I understand there's an affidavit in the file.

MR. FALK: He's here.

MS. MIMS: Yes, we can put him on the stand, Your Honor.

THE COURT: Yes, that's perfectly fine. Come on up Mr. Shaffer.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm the testimony you give to this Court will be the truth so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. State your name and spell your last name for the record. Speak directly into the microphone.

THE WITNESS: Tristan Shaffer, S-h-a-f-f-e-r.

WHEREUPON:

TRISTAN SHAFFER,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q Mr. Shaffer, did you represent Mr. Twyman at the PCR hearing?
A Yes, sir, I did.
Q Was there any discussion about appealing that decision?
A I don't have any recollection of it, but I'm certain that he wanted an appeal.
Q And that's kind of a normal practice, isn't it?
A Yes, sir.
Q Was there a discussion about a 59(e) motion?
A I don't recall any discussion at the time of the actual PCR. I do recall a discussion after we got the order in. After we got the order in, which -- I don't recall -- the attorney's general office indicated that they served me with the order. I am not doubting that they did. I was not aware of that until we acquired it a good bit of time later.

Whenever I did become aware of it, I went to go see Mr. Twyman at the prison and I told him the issue. I told him that his order was similar to a case of Fishburne, which I was the attorney on at the time. I was doing the Fishburne order or Fishburne appeal at the time that we found this out. I said, well, there's this issue that it may actually give you some relief. He said -- he took the position that it wouldn't give him any relief because I didn't file the 59(e) at that time, but -- yeah.

I mean, he did ask me, whenever I went to go see him, I do definitely recall him saying that there was a problem with not filing a 59(e) but that was after I had received the order and after the timeliness, based off the attorney general's office -- it would have been untimely to do an appeal at that point.

Q Is Fishburne your case?

A Yes.

Q Okay. So, the order that was issued in this case, do you think it -- I'm sure you're the foremost authority in this state on Fishburne orders, I guess.

A Yeah. It is very, very similar. I have created one that is -- essentially, I underlined everything in the findings of fact and conclusion of law section that is essentially word for word what was in the Fishburne order.

And it's basically -- outside of the last three or four sentences, maybe five or six sentences, it is word for word from Fishburne.

There is a couple of comments in there. Those comments, I think, are pretty conclusionary at the end in those last three or four sentences. I don't think that they qualify as specific findings of fact.

Q And they're going back. But you would agree it's common practice to file appeals after PCR hearings.

A Oh, yes. Unless someone specifically tell you not to, you pretty much always file an appeal.

Q You also started your testimony by saying you were pretty sure that you thought that he wanted to file appeal.

A Yeah. I mean, I have absolutely no doubt that he wanted to file an appeal.

Q It's just that you don't have a specific recollection of the conversation.

A That's correct.

Q Okay.

MR. FALK: No further questions.

THE COURT: Miss Mims.

MS. MIMS: No further questions.

THE COURT: Thank you, sir. You can step down.

THE WITNESS: Thank you.

MR. FALK: I'd like to call Mr. Twyman.

THE COURT: Okay.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm the testimony you give to this Court will be truth so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you. If you could please speak directly into the microphone and state your name and spell your last name for the record.

THE WITNESS: Leslie Twyman, T-w-y-m-a-n.

WHEREUPON:

LESLIE TWYMAN,

after having been sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FALK:

Q Mr. Twyman, when this hearing started, I was, sort of, articulating what I thought the problem was, that you, sort of, are left without a remedy. But, you know, those are my words. So I want you to tell me, what are your concerns with about going forward with just Austin relief at this time?

A My concerns is my --

Q You're going to have to speak up.

A My concerns is my issues that I found on PCR, when we went to my PCR, going to the next court, that the court ain't going to listen to them

because there wasn't a 59(e) filed.
Q So you're saying there were issues that were raised that weren't addressed in the order?
A Yeah. There was plenty of issues that were raised.
Q So it's not that you're trying to add anything new. It's just you think the order did not cover all the issues that were raised at the hearing?
A No, it didn't.
MS. MIMS: Your Honor, may we pause and approach?
THE COURT: Sure.
(Bench conference off the record.)
BY MR. FALK:
Q I can't remember what the last question I asked you was, but what I was asking you, though, is that you thought that there were issues that were raised at the PCR hearing that were not addressed in the order.
A Yes.
Q And you had a conversation with Mr. Shaffer, right?
A Yes.
Q And you had asked him at that time to file a 59(e); is that right?
A That was after. But I also wrote him, but he

never --

Q You got to get closer to the mic.

A That was after, but I also wrote him.

Q Okay.

A And I called him on several occasions. There's no contact. When I got -- when I wrote to the Supreme Court, I wrote them a letter, and they send him a copy of the letter that I wrote about the 59(e).

Q Okay.

A There still was no response.

Q All right. What are the -- just give me an idea of some of the issues that you felt should have been covered in the order?

A Like the summary judgment of the statement that she made when they asked her in the court. She made a tape saying that I was outside talking to two people. And when she got to court, she lied and said she don't remember nothing like that. And I've been trying to get that DVD for the longest, but the State never had give it to me.

Q Are there other issues that you felt were --

A Just that would have helped me because that was two witness. Even Mr. Beach too, you know what I'm saying. He never even went to go get them. They lived right across from where the incident happened, that they said it happened.

Q And those are issues that you were trying to raise in your PCR?

A Yes. Those issues I was trying to raised in my PCR. It would have showed a different outcome.

MR. FALK: No further questions.

THE COURT: Miss Mims.

MS. MIMS: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. MIMS:

Q The issues that you spoke about briefly here, were those issues that were actually raised at the PCR hearing?

A Yes. It was mentioned in summary judgement that the DVD would show a different statement, yes.

Q And you spoke about those issues with Mr. Shaffer?

A Yes.

Q Okay. And this was?

A That was at the PCR hearing.

Q Okay. And you said you wrote him about filing a 59(e) motion, correct?

A Yes, I did.
Q And this was before he had given you the order?
A This is before I got the order of dismissal. I wrote the Supreme -- I wrote him and then I wrote the Supreme Court because he never answer in months.
Q So did you know that the court had denied your application?
A No, I didn't know until the order. When the order came in, everything was over with. Then Shaffer came and told me about Fishburne and stuff like that. And I asked him, did he file a 59(e), and he admitted that he didn't file a 59(e). He even gave me a statement that he didn't file a 59(e).
Q Would you want him to file a 59(e) before you even knew if your order was dismissed?
A I would tell him to file an 59(e) if they dismissed my order.
Q Okay.
A That's what's in the letter specifically.
Q Okay.
MS. MIMS: No further questions, Your Honor.
THE COURT: If this is the one I'm

remembering, it seems like there was a good bit of delay between the time of the hearing and the time the order came out. And I think, in that interim, I saw that there was a letter from Supreme Court saying, basically, that he has written to inquire about the status of the order. I can't remember who the letter went to saying, you know, what can you do help them gentleman? I think that was this case. Am I making that up?

It looks like a letter to Daniel Shearhouse at the Supreme Court in November of 2016. And then on November 15, 2016, a letter from the Daniel Shearhouse to Mr. Shaffer. I think, at that time, the order had still not been issued. But it may be that the judge had maybe indicated what the ruling was going to be because, "It appears that the judge is going to rule against us, but it may take a little while." And then I think there was a protracted period of time before the order actually came out.

MS. MIMS: Yes, Your Honor.

THE COURT: That was the feeling that I got.

Anything else, Mr. Falk?

MR. FALK: No, Your Honor.

THE COURT: You can step down, sir.

THE WITNESS: Thank you, ma'am.

THE COURT: Anything further from either party?

MR. FALK: No, Your Honor.

THE COURT: So I think he's entitled to the belated appeal and that's all I can really do at this point.

The State is in agreement that he is entitled to the appeal, that's my understanding.

MS. MIMS: Yes, Your Honor.

THE COURT: And you-all are going to prepared an order to that effect?

MS. MIMS: We can, Your Honor.

MR. FALK: Can the order just address his -- saying that this Court has no jurisdiction to grant a belated 59(e) appeal -- I mean, 59(e) motion.

THE COURT: I don't have any problem with that. Miss Mims is going to circulate the order to you at the same time she sends it to me, or before. And so if there's any wording that you would like to add, you can certainly address it if it's not in the order and I'll take it up.

MR. FALK: Thank you.

THE COURT: Okay. Thank you.

(The hearing was concluded.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Colleton County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

October 18, 2024

____
Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Leslie Twyman, SCDC# 345787, Applicant,	)	Case No.: 2019-CP-15-0484
v.	)	**ORDER GRANTING RELIEF PURSUANT TO *AUSTIN V. STATE*[1] AND DENYING ALL OTHER GROUNDS**
State of South Carolina, Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Leslie Twyman on June 24, 2019, asserting he was denied the right to appeal the denial of his initial post-conviction relief action and he was entitled to further proceedings to address issues not ruled upon in the prior action. Respondent, the State of South Carolina made its Return and Partial Motion to Dismiss on July 1, 2020. An evidentiary hearing was convened on July 20, 2022, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James F. Falk, Esquire. Assistant Attorney General Lauren Mims of South Carolina Attorney General's Office represented the State. Applicant testified on his own behalf, and called former post-conviction relief counsel, Tristan M. Shaffer.

This Court had before it a copy of the Colleton County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's former post-conviction relief records, the current post-conviction relief application, Respondent's return, the trial transcript and appellate records. After a review of the evidence presented and the State's concession that Applicant is entitled to a belated appellate review of the denial of his first-post conviction relief action, this Court grants Applicant the right to seek belated

[1] *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991)

appellate review pursuant to *Austin*. However, this Court denies and dismisses the application on all remaining grounds.

I. Procedural History

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. The Colleton County Grand Jury indicted Applicant for first-degree criminal sexual conduct and third-degree criminal sexual conduct (mental defect, mental; incapability, etc.) (2010-GS-15-00849, Count 1 and Count 2). Harris S. Beach of the Colleton County Public Defender's Office represented Applicant. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case.

On April 18, 2011, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Applicant as indicted, and on April 20, 2011, Judge Buckner sentenced Applicant to imprisonment for twenty-five years for first-degree criminal sexual conduct and for ten years for third-degree criminal sexual conduct, with the sentences to be served concurrently.

Applicant's Direct Appeal

Applicant pursued a direct appeal, represented by Appellate Defenders Elizabeth Franklin-Best and Susan B. Hackett from the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following instances of trial court error:

> I. The trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated."; and
>
> II. The trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. § 16-3-651(e) or (f).

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. *State v. Leslie Twyman*, Unpub. Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The remittitur was returned to the circuit court on August 9, 2013.

Applicant's Initial Post-Conviction Relief Action (2014-CP-15-0127)

Applicant filed his first application for post-conviction relief on February 11, 2014. In that application, Applicant alleged his imprisonment was unlawful based on:

1. Ineffective Assistance of Trial Counsel;
   a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct
   b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;
   a. On third-degree criminal sexual conduct, more to be amended later.

As requested relief, Applicant stated he was seeking to have his conviction and sentences vacated, a new trial, or resentencing.

Respondent made its return on August 20, 2014, requesting an evidentiary hearing, which was convened on October 29, 2014, before the Honorable Edgar W. Dickson. Applicant was represented by Tristan Shaffer, Esquire. Trial counsel and appellate counsel Hackett both testified at the evidentiary hearing, as did Applicant. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice. The order was filed on December 21, 2015, and served on counsel for Applicant on March 1, 2016. Applicant did not file an appeal.

II. FACTS GIVING RISE TO THE CHARGES

Jessie Mae Gooding was the State's first witness. She met Applicant through her church's outreach program and allowed Applicant and his wife to stay with her after they lost their home. Applicant was staying at Gooding's home at the time of the incident. Gooding's son Conrad is a disabled, bedridden veteran also living in the home. Victim lived down the street from Gooding, and would sometimes come to the house to sit with Conrad. Gooding got permission from Victim's mother before each visit, Gooding and would bring Victim back and forth from her house. ROA. pp. 40-43. Victim has an I.Q. of 55 and is emotionally developed at the equivalent to a six or seven year old. ROA. p. 119, p. 121.

On August 21, 2010, Gooding was away while Applicant was home with Conrad. Applicant called Gooding on the cell phone and said a friend was picking him up at the house and he would have Victim sit with Conrad. Later, Victim's mother called Gooding and consequently, Gooding called Applicant and said Victim had made an accusation against him. Applicant denied the accusation. Gooding went to Victim's house, where police were already interviewing Victim. Victim was upset and said she was feeling pain. ROA. pp. 44-50.

Victim's stepfather (Stepfather) testified that he was outside in the yard when Victim came running to the house and said "Mamma, Mamma, something happened to me down the street, this man attacked me." ROA. p. 65. Victim's Mother (Mother) testified Victim came home disturbed and too upset to speak clearly – it took her ten minutes to calm down. Stepfather called 911. Mother took Victim to the bathroom and saw white semen in her underwear. ROA. pp. 76-81.

Victim testified that she was at home watching television when Applicant knocked on the door and asked her to watch Gooding's son. She went to Gooding's house and was watching a cartoon. Applicant said he wanted her to be a model. Then he unzipped Victim's pants and took a picture of her privates with a cell phone. Victim testified that Applicant put his penis in her mouth, in her butt two times, and then in her "private part." Applicant threatened Victim by telling her she could go to jail if she told anyone what happened. Victim ran out the back door after Applicant blocked her from going out of the front door. She ran home and told her mother what happened. ROA. pp. 164-177.

Applicant testified on his own behalf. He testified he was staying with Gooding because he and his wife had a bad drug habit. His wife went to jail because they had a domestic violence incident, and then they lost their apartment. Applicant confirmed that he called Gooding to let her know he was going to have Victim watch her son, but denied assaulting her. In his version of events, when he went to ask Victim to sit with Conrad, Stepfather answered the door. Victim's sister walked Victim half-way to Gooding's house and Applicant took her the rest of the way. According to Applicant, while they both smoked, they had a conversation about school, Victim said she was going to college. Applicant testified Victim complemented Applicant on a suit he wore previously. Applicant claimed Victim asked Applicant about his wife and their relationship. Applicant testified, "we was just talking cool, regular and stuff." ROA. pp. 259-260 (direct quote: ROA. p. 259, lines 20-21). Applicant also testified that Victim said she had intercourse with her stepfather. ROA. p. 261, lines 1-4.

III. Current Application

In his second and current application for post-conviction relief, Applicant claims entitlement to belated appellate review of his initial post-conviction relief action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). He also claims entitlement to raise any issues not adequately addressed in the order denying his first PCR, alleging that his prior PCR counsel failed to file any necessary motions pursuant to Rule 59(e), SCRCP. Applicant attaches several exhibits to his post-conviction relief application, including an unfiled *pro se* motion to alter or amend the order denying his first application, correspondence he sent prior PCR counsel Shaffer, an affidavit from prior PCR counsel Shaffer acknowledging that Shaffer failed to file any post-trial motions or appeals on Applicant's behalf, a letter Applicant sent the South Carolina Supreme Court, and the response from the Court.

IV. Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety, and listen to the testimony of witnesses and pass on their credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Belated Appeal pursuant to Austin v. State

Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*, 305 S.C. 453, 454, 409 S E. 2d 395, 396 (1991). *Austin* provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. *Id.* at 454, 409 S.E.2d at 396; *see* S.C. Code Ann. §

17-27-100 (right to appeal final judgment by post-conviction relief court). But *Austin* "is limited to its particular factual situation." *Aice*, 305 S.C. at 452, 409 S.E.2d at 394.[2] Pursuant to *Austin*, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. *Austin*, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In the present case, it is apparent from the record and testimony before this Court that Applicant desired appellate review from the denial of his initial post-conviction relief action. Accordingly, this Court finds Applicant is entitled to file a notice of appeal seeking belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin*.

Failure to File a 59(e) Motion and Sufficiency of Prior Order

Applicant also alleges that prior post-conviction relief counsel was ineffective for failing to file a Rule 59(e) motion, and asks this Court to address allegations that he maintains were not answered or were improperly addressed in the Order dismissing his first post-conviction relief action. In support of this argument, Applicant relied upon *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), arguing that the lower court order of his first post-conviction relief

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[2] *Aice* was issued in conjunction with *Austin*, limiting the reach of *Austin* and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

action did not adequately address the allegations first raised at the hearing... This Court denies relief on this claim and declines to address sufficiency of the initial post-conviction relief court's order issued by a separate circuit court judge.

As noted above, the Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). Accordingly, this Court denies relief on the allegation that prior PCR counsel was ineffective for failing to file a proper 59(e) motion, as this is not a cognizable claim upon which relief can be sought.

However, In *Fishburne v. State*, our Supreme Court remanded a matter back to the post-conviction relief court when it determined PCR counsel failed to ensure all issued were adequately addressed in the order of dismissal. *Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), *reh'g denied* (Sept. 27, 2019) ("However, because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR court's order does not comply with section 17-27-80. . . We remand to the PCR court for the issuance of a supplemental order setting forth findings of fact and conclusions of law on the PCR ground that was not addressed in the original order."). However, the Supreme Court did not extend the right to remand based on an incomplete order or to address insufficiency in a prior post-conviction relief to circuit court judges who are reviewing a successive post-conviction relief action. In *Fishburne,* the South Carolina Supreme Court remanded the post-conviction relief action back to the original post-conviction relief judge for a sufficient order. Here, Applicant is seeking to have one circuit court judge determine whether the work of another circuit court judge is proper while seeking the order be overruled, which is wholly improper. Accordingly, the claim of insufficiency of the order cannot be before this Court as this Court does not have the authority to set aside the order of another circuit court judge. *See Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1979); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). Therefore, this court will not address any claims of insufficiency of Applicant's prior post-conviction relief order.

V. CONCLUSION

Based on all the foregoing, this Court finds Applicant is entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to *Austin,* but denies relief for any other allegations. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and

2. Applicant is granted the right to seek a belated appellate review of the denial of his initial post-conviction relief action (2014-CP-15-00127) pursuant to *Austin.*

AND IT IS SO ORDERED this 12th day of July, 2024

Kristi Curtis

KRISTI F. CURTIS
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Kristi F. Curtis, Circuit Court Judge

LESLIE TWYMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001271

PETITION FOR WRIT OF CERTIORARI PURSUANT TO AUSTIN V. STATE

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUES PRESENTED

1.

Whether the PCR court correctly found petitioner was entitled to a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), where defense counsel candidly admitted petitioner wanted him to file an appeal, he neglected to file that appeal, and the state conceded petitioner was entitled to Austin relief?

2.

Whether this Court should remand petitioner's case to the PCR court where the circuit court determined it did not have the authority to order the remand where former PCR counsel admitted his deficiency in failing to a Rule 59(e) motion to reconsider even though the PCR order failed to make specific findings of fact and conclusions of law in accordance with S.C. Code Ann. § 17-27-80 since a remand is proper in these circumstances pursuant to Fishburne v. State, 427 S.C. 505, 515, 832 S.E.2d 584, 589 (2019)?

STATEMENT

Petitioner was indicted at the April 14, 2011 term of the Colleton County grand jury for the offenses of criminal sexual conduct in the first-degree and criminal sexual conduct in the third-degree. Both counts pertained to the same alleged adult victim, J.F., for an alleged sexual assault that occurred on August 31, 2010. App. 523-524.

The first-degree criminal sexual conduct indictment alleged petitioner committed a sexual battery while luring the mentally challenged victim into his home under false pretenses while kidnapping her. The third-degree criminal sexual conduct charge alleged that petitioner committed a sexual battery upon the same victim while knowing, or where he should have known, the victim was mentally "defective" in violation of S.C. Code Ann. § 16-3-654 (1)(b). App. 523-524.

The trial

Petitioner's case was called to trial on April 18, 2011, before the Honorable Perry M. Buckner, III, and a jury. Harris Beach of the Colleton County public defender's office represented petitioner. Ben Shelton was the assistant solicitor prosecuting the case. App. 1.

Jesse Mae Gooding was an elder at the New Beginnings World Ministry church. Gooding testified that they did "outreach" to help people who were homeless. Gooding lived with her son, Conrad, who was a disabled veteran with brain damage. One of her neighbors was the alleged victim in this case – J.F. App. 68, l. 3 – 70, l. 10. Gooding said it was common for her to have "children and other people" come and sit with her disabled son, Conrad at her house. App. 70, ll. 11-14.

Petitioner and his wife came to live with Gooding for a time in 2010. Gooding offered that petitioner's marriage was "on the rocks." Gooding remembered that petitioner would drive the van to church and that J.F. would ride with them. Gooding maintained that one on occasion petitioner asked her how old J.F. was, and "I told him she was eighteen." App. 71, l. 23 – 72, l. 4.

On August 21, 2010, Gooding was not at home while petitioner stayed there with Conrad. Later that day, Gooding testified that J.F.'s mother called her and told her of the accusation J.F. had made against petitioner. Gooding called petitioner to tell him about the accusation: "You're being accused of messing with J." Petitioner responded: "I didn't do anything." App. 72, l. 18 – 75, l. 25.

Gooding said she then drove to the house where J.F. lived, and the police were already there. Gooding recalled J.F. being upset, and she went to the hospital in Charleston with J.F. and her family so J.F. could be examined. App. 76, l. 3 – 77, l. 23.

J.F.'s mother, Caroline, testified that after she learned of the accusation that "I told her that she cannot take no (sic) shower or a bath. So that whatever happened, you know, evidence would be leave (sic) right there." App. 108, ll. 107, l. 15 – 108, l. 9. Caroline claimed she saw "white semen" . . . "in her vagina," and she told Ms. Gooding to "save the clothes." App. 108, ll. 12-25.

J.F., was found competent by the trial judge to testify at trial. App. 185, l. 20 – 190, l. 9. Then, in the presence of the jury, J.F. testified and said petitioner asked her "to watch Ms. Gooding's son" that day. She went to Ms. Gooding's house and she claimed petitioner told he wanted her to "model" for him, and he took photographs on his phone of her "private part," and "my butt." J.F. also maintained that petitioner then had oral and anal sex with her. J.F. testified petitioner then tried to stop her from leaving but she got out of the house through the back door and ran home. App. 195, l. 4 – 203, l. 24.

There was no DNA evidence implicating petitioner in the crime. App. 170, l. 5 – 178, l. 20; 179, l. 17 – 180, l. 6. The nurse at the hospital, Maria Flynn, testified J.F.'s injuries were consistent with a sexual assault and "some sort of blunt force trauma." App. 266, l. 5 – 267, l. 16.

The state offered Carol Marks, a special education teacher of the alleged victim, J.F., without objection as an expert in special education/special needs education. App. 143, l. 18 – 147, l. 1. Marks then testified J.F. had an IQ between 50 and 70. Marks said J.F.'s "overall IQ is about a 55." App. 147, ll. 5-17.

Detective Jodi Taylor of the Colleton County Sherriff's Department testified she tried to interview petitioner about the accusation. The solicitor then asked Taylor about whether appellant gave her a statement after she gave him Miranda warnings, and Taylor responded, without objection, "He would not – *he refused to sign and waive his rights and make a statement.*" App. 221, ll. 4-13.

In moving for a directed verdict, defense counsel Beach argued the state had failed to provide evidence that J.F. was a mentally deficient person within the meaning of the statute. "They have gone to great lengths to try to portray this as a non-consensual act with someone who is mentally deficient" and that the third-degree CSC charge seemed to allege a "consensual sex [act] with a person who is mentally deficient." Defense counsel asked the judge to direct a verdict "in regard to CSC in the third-degree." The judge denied the motion. App. 269, l. 21 – 276, l. 10.

Petitioner testified in his own defense. Petitioner said that he called Gooding to let her know that he was going to have J.F watch her son Conrad. Petitioner testified that when he went to ask J.F. to sit with Conrad, her stepfather answered the door. Petitioner said everything was normal with the stepfather and J.F. apart from J.F. asking him about his relationship with his wife. During this same conversation she told petitioner that she had been having sex since she was sixteen, and that she had sex with her stepfather. Petitioner did not believe J.F., and he testified that he told her that he was "cool" with his wife. Petitioner denied ever touching J.F. in a sexual manner or having sex with her. App. 286, l. 6 – 289, l. 5.

In his closing argument, defense counsel Beach told the jurors: "There's evidence that J. had sexual intercourse with someone that day. She is eighteen years old. She obviously had sexual relations with someone. Was it coerced? The lady from MUSC said they could not conclusively say that it was coerced or it wasn't coerced. They could say that there was some discoloration, but they can't even say it was coerced." App. 313, ll. 7-17. Beach reminded the jury that petitioner testified he did not sexually assault J.F. and that there was no DNA match to petitioner. App. 308, l. 10- 309, l. 21.

The solicitor argued that petitioner "lured" J.F. under false pretenses to Gooding's house, and that he forcefully had sex with her. The solicitor reminded the jury that J.F.'s mother said she found semen in her underwear. 9-1-1 was called, and the solicitor claimed the evidence showed that J.F. was mentally defective and that petitioner having sex with her was in violation of the law/ App. 316, l. 24 – 324, l. 15.

The jury convicted petitioner of criminal sexual conduct in the first-degree and criminal sexual conduct in the third-degree. App. 348, l. 24 – 349, l. 7. Judge Buckner sentenced petitioner to twenty-five years' imprisonment for criminal sexual conduct in the first-degree and ten years' concurrent for criminal sexual conduct in the third-degree. App. 366, ll. 1-14.

Petitioner was represented on direct appeal by appellate defender Elizabeth Franklin-Best and then by appellate defender Susan Barber Hackett after counsel Franklin-Best left the Office of Appellate Defense. The Court of Appeals affirmed petitioner's convictions on direct appeal. App. 368-370.

PCR

Petitioner then filed an application for post-conviction relief on February 11, 2014. App. 371-376. The state filed a return dated August 21, 2014. App. 377-382.

An evidentiary hearing was then convened on October 29, 2014, before the Honorable Edward W. Dickson. Tristan Shaffer represented petitioner, and Ashleigh R. Wilson was the assistant attorney general. App. 384.

At the beginning of the PCR hearing, counsel Shaffer told the judge that petitioner was alleging ineffective assistance of appellate counsel for failing to brief that a directed verdict should have been granted on the charge of criminal sexual conduct *in the first-degree*. Counsel argued that there was no evidence that the alleged victim was inveigled by petitioner into coming to the Gooding home or that petitioner kidnapped her. App. 388, l. 5 – 396, l. 19.

PCR counsel also said that trial counsel was ineffective for giving deficient legal advice as to the plea offer prior to trial by telling petitioner that the "CSC first will likely get thrown out later on." Petitioner relied on that advice to his detriment. App. 388, l. 5 – 396, l. 19.

In addition, PCR counsel argued trial counsel was ineffective for failing to object to the alleged victim's mother's testimony that she thought semen was present in the alleged victim's underwear, and for failing to argue that the alleged victim's avoidance of eye contact was consistent with her not telling the truth. App. 388, l. 5 – 396, l. 19.

Susan Hackett then testified that she took over petitioner's appeal from former appellate defender Elizabeth Franklin-Best. Hackett was only on the case after it was briefed, and she testified that she had no ability to modify or change the issues raised by prior appellate counsel.

However, Hackett stated that if she had had the appeal from the beginning, she would have looked for legal issues related to the criminal sexual conduct in the first-degree charge, whereas prior appellate counsel only raised directed verdict legal issues related to the criminal sexual conduct in the third-degree conviction. App. 399-406; Supp. App. 1-13.

Hackett added that there was another directed verdict argument available to trial counsel that was not made. That argument was that the state failed to present any evidence the alleged victim *submitted* to the sexual battery while she was the victim of forceful confinement or kidnapping. This directed verdict argument could have been made at trial and then on appeal, if denied at trial. App. 406, l. 14 – 413, l. 21.

Trial counsel Harris Beach then testified that he recalled a plea offer being made in this case but did not remember exactly the terms of the plea offer. Beach thought it was "around fifteen years." App. 416, l. 12 – 417, l. 6.

Defense counsel said that he was confident that he relayed the plea offer in this case, because he always did relay such offers. He added that petitioner said, "he didn't do it, and he wasn't going to take the offer." App. 421, ll. 8-23.

Beach also offered that he did not think he had any basis to object to the alleged victim's mother's testimony claiming she saw semen on J.F. that day. App. 428, ll. 9-15.

Petitioner then testified that a six-year plea offer was made prior to the trial. Petitioner said he did not accept the offer because defense counsel told him if he went to trial and lost, that he would get it "thrown out" on appeal. App. 430, l. 22 - 431, l. 13. Petitioner said his understanding of the winning appellate argument would have been that there was no DNA evidence linking him to the sexual assault. That would have been the basis of getting his conviction reversed. App. 431, ll. 9-21; 432, l. 3 – 433, l. 3.

Petitioner also testified that he was told by appellate defender Hackett that his prior appellate defender had only raised an argument regarding criminal sexual conduct in the third-degree, and there was no way that could be changed to challenge his conviction for criminal sexual conduct in the first-degree. Petitioner was serving a twenty-five-year prison sentence for CSC in the first-degree. Thus, the argument made on appeal as to the conviction for criminal sexual conduct in the third degree, for which he received a ten-year concurrent sentence, would not have assisted petitioner if he prevailed on appeal. App. 432, l. 22 – 433, l. 20.

Petitioner also testified that his attorney was ineffective for failing to object at trial to law enforcement commenting on his right to remain silent. App. 436, l. 22 – 437, l. 12. As seen, Detective Jodi Taylor testified that she read petitioner his Miranda warnings and that petitioner "refused to sign and waive his rights and make a statement." App. 221, ll. 4-13. Petitioner had also complained that his attorney should have objected to the victim's mother's testimony that she found semen on the victim. App. 176, ll. 15-25.

Order of dismissal

An order of dismissal, only five pages long, was issued on December 15, 2015. App. 458-462. The order only noted that appellant raised issues of ineffective assistance of counsel for only making a motion for directed verdict on CSC-third and not CSC-first and that "counsel should have objected to [the] solicitor leading of witnesses." The order also stated petitioner raised the issue of "ineffective assistance of appellate counsel." App. 459.

There were no findings of fact and conclusions of law about any specific post-conviction issues raised by petitioner including the improper comment on his right to silence, petitioner being incorrectly advised to reject the plea offer, trial counsel not objecting to the victim's mother testifying that semen was allegedly seen on J.F. and the failure of appellate counsel to challenge his conviction for criminal sexual conduct in the first-degree for which he was sentenced to twenty five years imprisonment. App. 458-462. A notice of intent to appeal was not filed by PCR counsel from this truncated order of dismissal.

Second PCR application and hearing

Petitioner then filed a second post-conviction relief application on June 24, 2019. App. 464-484. This application for post-conviction relief asked for a belated appeal of his prior PCR pursuant to Austin v. State. It also noted that PCR counsel Tristan Shaffer had submitted an affidavit stating his belief that the order of dismissal did not provide adequate findings of fact and conclusions of law, and that it was therefore invalid pursuant to Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). PCR counsel Shaffer admitted in his affidavit that he inadvertently failed to file a motion to alter or amend the inadequate order of dismissal, and he also neglected to file a notice of intent to appeal after it was issued. App. 472

The PCR application also included an unfiled Rule 59(e) motion to alter or amend that was apparently signed by PCR counsel Tristan Shaffer. This unfiled Rule 59(e) motion noted the order of dismissal did not address the plea offer issue, or the failure to object to the victim's mother testifying she saw semen in her "daughter's vagina" issue. In addition, it did not address the legal issue of trial counsel withdrawing his line of questioning about the alleged victim having a problem telling the truth when she got excited. App. 479-481.

The unfiled Rule 59(e) motion also noted the order of dismissal failed to address Detective Jodi Taylor commenting on petitioner's right to silence, nor did it discuss counsel's failure to argue the alleged victim did not make eye contact when she was ashamed or not telling the truth. Another matter left not addressed was why trial counsel only moved for a directed verdict on the charge of criminal sexual conduct in the third-degree but not first-degree, and trial counsel's failure to present the "narrative summary of abuse DVD to the jury." App. 479-481. The state filed a return to the application for post-conviction relief dated July 1, 2020. App. 485-492.

Second PCR hearing

An evidentiary hearing was convened on July 20, 2022, before the Honorable Kristi F. Curtis. James Falk represented petitioner, and Lauren Mims was the assistant attorney general. App. 493.

PCR counsel Falk told the judge petitioner had wanted his prior PCR attorney to file a Rule 59(e) motion, and that the state now consented to petitioner being granted a belated appeal pursuant to Austin v. State since prior PCR counsel also did not file a notice of intent to appeal. Falk offered that he unfortunately did not think the PCR judge here had the authority to grant petitioner relief pursuant to Fishburne v. State – a remand for fact-findings and conclusions of law -- or to allow petitioner to file a belated Rule 59(e) motion at this point. App. 496-499.

The PCR judge stated that she had no problem granting petitioner a belated appeal of Judge Dickson's order denying PCR. However, she ruled that she could not grant any further relief pertaining to the original order of dismissal being defective or invalid for not stating findings of fact and conclusions of law. App. 499-500.

Former PCR counsel Shaffer then testified that there was no doubt that petitioner wanted him to appeal the PCR order denying relief and that he failed to do so. Shaffer also said he went to the prison and told petitioner the problems with his order of dismissal were very similar to problems in Fishburne v. State. Shaffer said that he should have filed a Rule 59(e) motion to alter or amend the order of dismissal in this case. App. 501-503.

Petitioner then testified that he wanted his PCR lawyer Shaffer to file a Rule 59(e) motion from the defective order of dismissal. App. 505-506. Petitioner wrote PCR counsel about filing that Rule 59(e) motion, and he wrote the Supreme Court when PCR counsel did not answer his letter. App. 507-508.

The PCR judge ruled that she would grant petitioner a belated appeal pursuant to Austin v. State, but she did not think she had the authority to address the Rule 59(e) motion issue, and to grant any relief – seemingly a remand for further findings of fact and conclusions of law or a new PCR hearing -- that would have come from that Rule 59 motion had it been filed. App. 508-511.

Order granting partial relief only

An order granting relief pursuant to Austin v. State and denying all other relief was filed on July 23, 2024. App. 513-522. This order granted petitioner a belated PCR appeal pursuant to Austin v. State, but it stated the court could not find prior PCR counsel was ineffective for failing to file a Rule 59(e) motion since under Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991), held that PCR counsel cannot be found ineffective.

The order noted that pursuant to Fishburne v. State, 427 S.C. 505, 516, 832 S.E.2d 584, 589-90 (2019), the Supreme Court had remanded a matter where it found the PCR court failed to make adequate findings of fact and conclusions of law in the order. However, the PCR judge concluded that one circuit court judge could not "overrule" another circuit court judge's order of dismissal. "Accordingly, the claim of insufficiency of the order cannot be before this court as this court does not have the authority to set aside the order of another circuit court judge." App. 522-523.

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243, SCACR.

ARGUMENT

1.

The PCR court correctly found petitioner was entitled to a belated PCR appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), where defense counsel candidly admitted petitioner wanted him to file an appeal, he neglected to file that appeal, and the state conceded petitioner was entitled to *Austin* relief.

As seen, PCR counsel Shaffer signed an affidavit, and he testified at the PCR hearing that petitioner wanted him to file a notice of intent to appeal from the order denying him PCR relief. Shaffer candidly admitted that he neglected to file a Rule 59(e) motion that was necessary given the inadequate PCR order denying relief, and he also failed to file a notice of intent to appeal the order of dismissal as requested by petitioner.

Petitioner is respectfully entitled to a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), under these circumstances. The PCR court in this case correctly granted petitioner Austin relief, particularly since the state consented to it.

2.

<u>This Court should remand petitioner's case to the PCR court where the circuit court determined it did not have the authority to order the remand where former PCR counsel admitted his deficiency in failing to a Rule 59(e) motion to reconsider even though the PCR order failed to make specific findings of fact and conclusions of law in accordance with S.C. Code Ann. § 17-27-80 since a remand is proper in these circumstances pursuant to *Fishburne v. State*, 427 S.C. 505, 515, 832 S.E.2d 584, 589 (2019).</u>

As seen, Petitioner raised several PCR issues during the first PCR hearing that were not addressed at all in the order of dismissal of the first PCR court. These issues included improper testimony by Detective Jodi Taylor that petitioner did not talk to the police after he was read his <u>Miranda</u> warnings. This <u>Doyle v. Ohio</u>, 426 U.S. 610 (1976) violation issue was certainly a viable post-conviction relief issue given trial counsel's failure to object to this improper testimony as seen above. <u>See</u> <u>State v. McIntosh</u>, 358 S.C. 432, 595 S.E.2d 484 (2004).

The order of dismissal also did not address the ineffectiveness issue of trial counsel allegedly advising petitioner to turn down the plea offer because he would prevail on appeal if he was convicted. Further, the order also did not address the failure to object to the testimony of the alleged victim's mother that she spotted semen on the alleged victim as an improper lay opinion under Rule 701, SCRE or otherwise.

In addition, petitioner alleged his appellate counsel was ineffective for failing to argue a directed verdict should have been granted on the charge of criminal sexual conduct in the first-degree for which petitioner received a twenty-five-year prison term. Petitioner only received a concurrent sentence of ten years for his criminal sexual conduct in the third-degree conviction which was the subject of appellate counsel's brief at the Court of Appeals. Thus, even if appellate counsel won petitioner's appeal, it would not have done petitioner any practical good.

Further, it was brought out during the PCR hearing through former appellate counsel that trial counsel should have argued during his directed verdict motion that there was no evidence the alleged victim *submitted* to a sexual assault because of being kidnapped or confined. This directed verdict motion should have been made at trial, and again on appeal if it was unsuccessful at trial.

The order of dismissal in this case did not contain any specific findings of fact and conclusions of law as to several viable PCR issues as seen supra. These findings of fact and conclusions of law were mandated by the PCR statute, South Carolina Code Section 17-27-80.[1]

In Fishburne v. State, 427 S.C. 505, 512, 832 S.E.2d 584, 587 (2019) and Simmons v. State, 416 S.C. 584, 592, 488 S.E.2d 220, 225 (2016), this Court still found extraordinary circumstances could warrant a remand for specific findings of fact and conclusions of law even where PCR counsel did not file a Rule 59(e), SCRCP motion to alter or amend the defective PCR order.

This Court noted in Fishburne that:

> [W]e acknowledge our prior decisions have been somewhat inconsistent as to whether a Rule 59(e) is required to preserve an applicant's request to remand to the PCR court for the consideration of particular issues in which the PCR court failed to make sufficient findings of fact and conclusions of law. . . [b]ecause the United States Constitution Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is ingrained in PCR cases, we cannot continue to permit a party's

[1] In Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266, 267 (2007), decided prior to petitioner's PCR hearing, but before the present appeal, this Court held that where an order of dismissal did not contain adequate or specific findings of fact and conclusions of law, defense counsel had a duty to review the order and to file a Rule 59(e), SCRCP motion to alter or amend under those circumstances.

> procedural shortcomings—such as the failure to file a Rule 58(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel where the PCR court's order does not comply with section 17-27-80.

Fishburne v. State, 427 S.C. at 515-16, 832 S.E.2d at 589.

Since the initial PCR order in this case was wholly lacking as to specific findings of fact and conclusions of law as mandated by the statute, and since petitioner has done his due diligence throughout in pointing out specific post-conviction relief issues that had been raised but not ruled upon, petitioner respectfully submits the interests of justice dictate that petitioner's case should be remanded to the post-conviction court with instructions for that court to make specific findings of fact and conclusions of law as mandated by S.C. Code § 17-27-80. See Fishburne v. State, 427 S.C. at 515-16, 832 S.E.2d at 589 (2019).

CONCLUSION

This Court should grant the Petition for Writ of Certiorari and remand petitioner's case to the PCR court for specific findings of fact and conclusions of law on the PCR issues raised during the 2014 PCR hearing. In the alternative, if a remand is not practicable, petitioner respectfully requests that this Court grant him a new PCR hearing.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of March, 2025.

RECEIVED
Aug 06 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to
Colleton County
Honorable Perry M. Buckner, Trial Judge
Honorable Edgar W. Dickson, First PCR Judge
Honorable Kristi F. Curtis, Second PCR Judge

Appellate Case No. 2024-001271

LESLIE TWYMAN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RETURN TO PETITION
FOR A WRIT OF CERTIORARI
PURSUANT TO AUSTIN V. STATE

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

DANIELLE DIXON, 73999
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

QUESTIONS PRESENTED

1. Whether the PCR court correctly found petitioner was entitled to a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), where defense counsel candidly admitted petitioner wanted him to file an appeal, he neglected to file that appeal, and the state conceded petitioner was entitled to Austin relief?

2. Whether this Court should remand petitioner's case to the PCR court where the circuit court determined it did not have the authority to order the remand where former PCR counsel admitted his deficiency in failing to file a Rule 59(e) motion to reconsider even though the PCR order failed to make specific findings of fact and conclusions of law in accordance with section 17-27-80 of the South Carolina Code since a remand is proper under these circumstances pursuant to Fishburne v. State, 427 S.C. 505, 515, 832 S.E.2d 854 (29019)?

RESPONDENT'S COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Respondent has conceded Petitioner did not voluntarily waive his right to appeal the denial of his first PCR application and is thus entitled to a belated appeal of that order.

2. Should this case be remanded to the PCR court for the limited purpose of issuing a supplemental order addressing his claims that counsel was ineffective for (1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted; (2) not objecting to testimony by the victim's mother that she saw semen on the victim; (3) not arguing as part of his motion for a directed verdict that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined; and (4) as to appellate counsel, not arguing a directed verdict should have been granted on first-degree CSC charge? Further, because the alleged Doyle violation was not clearly raised to the PCR court, should this Court decline to remand this issue? Finally, has Petitioner waived a remand for rulings on issues he did not raise in his petition for a writ of certiorari?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-five-year sentence. In 2010, the Colleton County Grand Jury indicted Petitioner for first-degree criminal sexual conduct (CSC) and third-degree CSC (2010-GS-15-00849). On April 18, 2011, Petitioner proceeded to a jury trial before the Honorable Perry M. Buckner, III. Public Defender Harris S. Beach represented Petitioner, and Assistant Solicitor Benjamin Shelton prosecuted the case. The jury convicted Petitioner as indicted, and Judge Buckner sentenced Petitioner to concurrent terms of twenty-five years for first-degree CSC and ten years for third-degree CSC.

Petitioner filed a direct appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Petitioner argued the trial court erred in not granting his motion for a directed verdict on the third-degree CSC when (I) the language in the indictment indicated the State was proceeding under a theory that appellant "forcibly" penetrated the accuser, which negated the aggravated component of the statute, and (II) the accuser was not mentally defective or incapacitated as defined in section 16-3-651(e) or (f) of the South Carolina Code. The Court of Appeals affirmed on the merits. State v. Leslie Twyman, 2013-UP-325 (filed July 17, 2013). The remittitur was sent August 9, 2013.

On February 11, 2014, Petitioner filed an application for post-conviction relief (PCR; 2014-CP-15-00127) alleging:

1. Ineffective Assistance of Trial Counsel;
   a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct.
   b. Trial counsel should have objected to Solicitor leading the witnesses.
2. Ineffective Assistance of Appellate Counsel:

a. On third-degree criminal sexual conduct, more to be amended later.

Petitioner did not file an amended application.

On October 29, 2014, an evidentiary hearing convened before the Honorable Edgar W. Dickson. Petitioner was represented by Tristan Shaffer, Esquire. At the hearing, Petitioner orally amended his application to allege:

1. Ineffective assistance of appellate counsel: appellate counsel failed to brief the issue regarding the trial court's denial of a directed verdict motion as to first-degree CSC.

2. Ineffective assistance of counsel:

    a. To the extent the argument regarding the directed verdict motion of first-degree CSC was unpreserved, trial counsel was ineffective for not preserving that argument.
    b. Failed to impeach victim by using a DVD statement.
    c. Failed to move to have the solicitor elect between CSC first and CSC third.
    d. Failed to object to the mother's statement involving seeing what she believed to be semen.
    e. Failed to argue victim might have been lying because she was diverting eye contact.
    f. Advised applicant not to accept a six-year plea offer.

On December 21, 2015, Judge Dickson issued an order denying and dismissing the application with prejudice. Petitioner did not appeal.

On June 24, 2019, Petitioner filed a second PCR application alleging he did not voluntarily waive his right to appeal his first PCR application (2019-CP-27-00436). Petitioner further asserted he should be able to appeal any issue raised at the first hearing but not addressed by the PCR court due to PCR counsel's failure to file a motion pursuant to Rule 59(e), SCRCP. Petitioner attached a draft of a Rule 59(e) motion signed by PCR counsel but never filed. Critically, the Motion raises additional issues that were not raised in the application or at the start of the hearing. Specifically, the allegations related to the PCR court's failure to address (3) trial counsel's withdrawal of a question to the victim's mother, (5) trial counsel's failure to object to the prosecution eliciting testimony about Applicant's refusal to provide a statement to police, and (7) trial counsel's failure to present the "Narrative Summary of Abuse" DVD to the jury were not raised in the application or clearly raised at the PCR hearing. (App. 390-96).

Respondent filed a return conceding the belated appeal issue. (App. 489). However, Respondent requested a hearing on the issue of whether the case should be remanded pursuant to Fishburne. At the hearing, Respondent again conceded Petitioner was entitled to a late appeal but asserted the circuit court lacked jurisdiction to remand the prior PCR court's order for additional findings. Thereafter, the circuit court issued an order finding (1) Petitioner was entitled to a belated appeal of the order dismissing his first PCR application and (2) the circuit court lacked the authority to remand the issue to the first PCR court for additional findings. This petition for writ of certiorari followed.

<u>STANDARD OF REVIEW</u>

The standard of review for post-conviction relief depends on the specific issue before the appellate court. <u>Smalls v. State</u>, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. <u>Buckson v. State</u>, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); <u>Smalls</u>, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. <u>Id</u>. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. <u>Goins v. State</u>, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

Argument

1. **Respondent concedes Petitioner did not voluntarily waive his right to appeal the denial of his first PCR application and should receive a belated appeal of that order.**

Respondent has conceded the evidence shows Petitioner did not voluntarily waive his right to appeal the denial of his first application for PCR. Thus, Respondent concedes this Court should review that order pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

2. **This Court should remand this order to the PCR court for the limited purpose of issuing a supplemental order addressing whether counsel was ineffective for (1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted; (2) not objecting to testimony by the victim's mother that she saw semen on the victim; (3) not arguing as part of his motion for a directed verdict that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined; and (4) as to appellate counsel, not arguing a directed verdict should have been granted on the first-degree CSC charge. However, because the alleged Doyle violation was not clearly raised at the PCR hearing, a remand on that issue is not warranted. Further, Petitioner has waived a remand for rulings on issues he did not raise in his petition for a writ of certiorari.**

Petitioner contends the order denying his first PCR application should be remanded to the PCR court for additional findings because the court failed to address all of the issues he raised. Specifically, he avers the first PCR court failed to address issues regarding whether counsel was ineffective for (1) not objecting to an alleged Doyle violation; (2) advising him to turn down a plea offer; (3) failing to object to testimony of the victim's mother that she saw semen on the victim; and (4) failing to argue, as part of his directed verdict motion, that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined. He further avers the PCR court failed to address whether appellate counsel was ineffective for not arguing a directed verdict should have been granted on first-degree CSC. Respondent agrees this order should be remanded to the PCR court for the limited purpose of issuing a supplemental order addressing whether counsel was ineffective for (1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted; (2) not objecting to testimony by the victim's mother that she saw semen on the victim, (3) not arguing as part of his motion for a directed verdict that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined; and (4) as to appellate counsel, not arguing a directed verdict should be been granted on first-degree CSC. However, because the issue regarding the alleged Doyle violation was not clearly raised at the PCR hearing, a remand on that issue is not warranted. Finally, Petitioner has waived a remand for rulings on issues he did not raise in his petition for writ of certiorari.

Issue preservation is a fundamental component of appellate procedure in South Carolina. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of preservation is "to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006).

To preserve an issue for appeal, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, an issue—including a constitutional one—cannot ordinarily be raised or considered on appeal unless it was first presented to and ruled upon by the trial court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

Generally, South Carolina's issue preservation requirements apply in PCR cases. See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007) (recognizing "the general rule that issues which are not properly preserved will not be addressed on appeal" is applicable in a PCR case). Thus, in *most* PCR cases where a party fails to properly preserve an issue or ensure a ruling is obtained, the issue will be unpreserved and will not be addressed on appeal. See Fishburne v.

State, 427 S.C. 505, 518, 832 S.E.2d 584, 590 (2019) (Hearn, J., concurring) ("[I]n most instances where a party fails to file a Rule 59(e) motion when required to do so, we will find the issue unpreserved and decline to address the merits."); Reese v. State, 425 S.C. 108, 109, 820 S.E.2d 376, 376-377 (2018) (explaining the law requires filing a proper motion to alter or amend when "a PCR order does not contain specific findings of fact and conclusions of law"). However, even when a party fails to file a needed post-ruling motion, our Supreme Court has recognized a limited remand may be appropriate due to the constitutional guarantee of the right to effective assistance of counsel that is "engrained in PCR cases" *when a PCR order fails to contain the requisite findings of facts and conclusions of law as to all issues raised.* Fishburne, 427 S.C. at 516, 832 S.E.2d at 589 (emphasis added); Simmons v. State, 416 S.C. 584, 591, 788 S.E.2d 220, 224 (2016) (recognizing "our jurisprudence permits a remand under such extraordinary circumstances"); Moses v. State, 442 S.C. 263, 271, 898 S.E.2d 174, 178 (Ct. App. 2024) ("Only under extraordinary circumstances—such as when a PCR court fails to make sufficiently specific findings of fact—do the interests of justice permit a court to reach unpreserved issues.").

a. ***This order should be remanded to the PCR court for the limited purpose of issuing an order addressing whether counsel was ineffective for(1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted; (2) not objecting to testimony by the victim's mother that she saw semen on the victim; (3) not arguing as part of his motion for a directed verdict that no evidence showed the victim submitted to a sexual assault because of being kidnapped or confined; and (4) as to appellate counsel, not arguing a directed verdict should have been granted on the first-degree CSC charge.***

At the start of the PCR hearing, Petitioner orally amended his application to allege appellate counsel was ineffective for not raising an issue related to the trial court's failure to direct a verdict on the first-degree CSC charge. (App. 390-93). Likewise, he orally amended the application to allege the following specific claims of ineffective assistance of trial counsel:

a. To the extent the argument regarding the trial court's failure to direct a verdict on the first-degree CSC was unpreserved, trial counsel was ineffective for not preserving that argument.

b. Failed to impeach victim by using a DVD statement.

c. Failed to move to have the solicitor elect between CSC first and CSC third.

d. Failed to object to the mother's statement involving seeing what she believed to be semen.

e. Failed to argue victim might have been lying because she was diverting eye contact.

f. Advised applicant not to accept a six-year plea offer.

(App. 390-94). Although Respondent initially objected to these issues because Petitioner did not provide prior notice of them, Respondent later agreed to proceed on these allegations. (App. 396).

Respondent agrees the PCR court's order of dismissal does not clearly rule on these issues and thus did not comply with section 17-27-80 of the South Carolian Code. (App. 476-77). Thus, Respondent submits this order should be remanded to the circuit court for the limited purpose of issuing an order addressing whether counsel was ineffective for (1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted;[1] (2) not objecting to testimony by the victim's mother that she saw semen on the victim;[2] (3) not arguing as part of his

[1] Although Petitioner claimed he rejected the plea because counsel told him the appellate courts would reverse any conviction due to the lack of DNA evidence, counsel denied advising Petitioner that the appellate courts would reverse his conviction based on the lack of DNA evidence. (App. 431, 441). This is ultimately an issue of credibility for the PCR court; however, Respondent notes the PCR court found counsel's testimony credible and Petitioner's testimony not credible.

[2] This testimony was cumulative to the DNA expert's testimony that the victim's vaginal swabs contained semen. (App. 108, 176). Further, Respondent agrees with trial counsel's assessment that there was not a valid objection to the mother's testimony. (App. 428). Respondent also notes that notwithstanding his burden, Petitioner did not set forth a valid legal objection to this testimony at the PCR hearing. Specifically, when questioned about this issue, Petitioner merely asserted the DNA expert indicated "there was no semen found in the panty line." (Pet. 434-35). This was inconsistent with the DNA expert's actual testimony that although she was unable to develop a

motion for a directed verdict that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined;[3] and (4) as to appellate counsel, not arguing a directed verdict should have been granted on first-degree CSC.[4]

b. A remand on the alleged Doyle violation is not warranted because that issue was not clearly raised at the PCR hearing.

In his PCR application, Petitioner did not raise an issue with an alleged Doyle violation, nor did he file an amended application raising this issue. (App. 371-76). At the start of the hearing, when Petitioner set forth his oral amendments to the PCR application, he did not raise any issue with an alleged Doyle violation. (App. 390-94). Likewise, although Petitioner briefly testified he

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DNA profile from the semen, she found semen on in the victim's vaginal swab. (App. 176-78). Respondent notes the petition for writ of certiorari is the first time Petitioner has alleged this testimony violated Rule 701, SCRE.

[3] Appellate counsel acknowledged it was an "open question" in South Carolina whether the use of the present tense "submits" in the statute required the victim to submit to the kidnapping concurrently with the sexual assault. (App. 408-13). She further acknowledged she would have needed to further research the issue—including looking into definitions of words in the statute—before deciding whether to present it on appeal. (App. 410). In other words, the argument advanced at the PCR hearing related to the first-degree CSC charge was a novel argument. Because it was novel, counsel was not deficient for not raising it. See Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) ("[A] collateral review proceeding is ill-suited for announcing a new rule of substantive law pertaining to an underlying trial; appellate courts are to do so only in the rarest of circumstances. This is especially true in a retrospective PCR analysis under Strickland, which seeks to determine whether counsel was ineffective at the time of the alleged . . . . *[W]e do not require attorneys to be clairvoyant in anticipating changes to the law* . . . ." (emphasis added)).

[4] Although trial counsel made a very generic argument that the court should direct a verdict on the first-degree CSC charge, the majority of his argument focused on third-degree CSC, and he did not provide a specific argument related to the first-degree CSC charge. (App. 269-70). To the extent he raised an argument about first-degree CSC that was sufficient for appellate review, the State presented sufficient evidence through the victim to survive a directed verdict motion. Specifically, the victim testified that she went to a neighbor's home at Petitioner's request to watch the son (whom she had watched before); once at the home, Petitioner forced her to perform oral sex on him and penetrated her vagina and anus. (App. 194-200). This testimony was sufficient for the jury to find Petitioner lured the victim to the home using false pretenses in order to sexually assault her. Further the victim testified that after Petitioner penetrated her, she tried to leave but he would not allow it. (App. 201). This testimony was sufficient for the jury to find he sexually assaulted her by forcibly preventing her from leaving. Because evidence clearly supported first-degree CSC, it is not reasonably likely an appellate court would have reversed on this ground.

thought counsel should have objected when the solicitor asked an officer if he made a statement, and although Petitioner briefly questioned counsel about this issue after the State recalled counsel, **Petitioner did not orally amend his allegations at any point during the hearing to set forth this issue or ask the Court to rule on it**. (App. 436-37, 444).

The mere questioning of a witness without more is not sufficient to raise an issue to a PCR court. Because of the nature of PCR actions—which seek to evaluate an attorney's representation of a client—testimony is often elicited that is not directly related to an issue in order to give context to the representation as a whole; thus, there is often no basis to object on relevance even if testimony does not directly relate to an issue raised. A passing question during examination is not sufficient to adequately raise an issue to the PCR court or put the PCR court on notice that it is an issue the Court is being asked to consider. See Queen's Grant II, 368 S.C. at 373, 628 S.E.2d at 919 (noting a key purpose of issue preservation is "to give the trial court a fair opportunity to rule on the issues"). Petitioner did not clearly raise this issue to the PCR court at any point prior to or during the hearing, and the PCR court did not have adequate notice that this was an issue it should rule on. Thus, the PCR court did not err in failing to rule on this issue.

The rationale underlying Fishburne and the purpose of the remand was based on the requirement that PCR courts adequately rule on issues raised. See Fishburne, 427 S.C. at 512, 832 S.E.2d at 587 ("Over the years, we have issued numerous opinions addressing a PCR court's failure to make adequate findings of fact and conclusions of law regarding duly raised issues."); id. at 514, 832 S.E.2d at 588–89 ("The cases this Court remanded for specific findings were *unique cases in which the Court attempted to remind circuit court judges and parties* that: (1) specific findings of fact and conclusions of law were required; and (2) a Rule 59(e) motion must be filed if issues are not adequately addressed in order to preserve the issues for appellate review. Although the cases apparently have not accomplished the Court's goal, they do not change the general rule that issues which are not properly preserved will not be addressed on appeal." (emphasis added) (quoting Marlar, 375 S.C. at 410, 267 S.E.2d at 267)).

Fishburne does not stand for the proposition that a deficiency by PCR counsel can form the basis for a remand. Fishburne, 427 S.C. at 516, 832 S.E.2d at 589 (2019) ("[B]ecause the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming—such as the failure to file a Rule 59(e) motion—to prevent this Court from remanding claims of ineffective assistance of counsel *when the PCR court's order does not comply with section 17-27-80.*" (emphasis added)); c.f. Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991) ("Aice asks this Court here to carve out an exception that well may swallow Rule 50(3). It is a troubling prospect indeed to us that the number of successive PCR applications to be entertained by our judicial system in a given case be limited only by the imagination and creativity of skilled attorneys. As long as a given convict's counsel could craft new arguments not raised by prior PCR counsel, a successive application could be heard, under Aice's view."); id. at 451, 409 S.E.2d at 394 ("Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. At some juncture judicial review must stop, with only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice.").

Likewise, Fishburne (notwithstanding its name) does not stand for the proposition that a PCR court must engage in a fishing expedition to try to decipher every conceivable issue that may exist based on witness testimony. See Fishburne, 427 S.C. at 512, 832 S.E.2d at 587 ("Over the years, we have issued numerous opinions addressing a PCR court's failure to make adequate findings of fact and conclusions of law regarding *duly raised* issues." (emphasis added)). The PCR act requires allegations be raised with specificity, and preservation requirements exist to ensure a trial court has adequate opportunity to rule on an issue. See S.C. Code Ann. § 17-27-50 (providing a PCR application shall "specifically set forth the ground upon which the application is based"); Queen's Grant II, 368 S.C. at 373, 628 S.E.2d at 919 (noting a key purpose of issue preservation is "to give the trial court a fair opportunity to rule on the issues"). A court does not have adequate opportunity to rule on an issue that is not clearly raised. Because the issue regarding an alleged Doyle violation was not clearly raised, the PCR court did not err in failing to address that issue in its order. Thus, a remand is not warranted on the alleged Doyle issue.

c. Petitioner has waived a remand for rulings on issues he did not raise in his petition for a writ of certiorari.

Initially, Petitioner has not challenged any ruling in the PCR court's order; he merely asks for a remand to address additional issues that were not addressed specifically in the PCR court's order. Thus, any ruling in the first PCR court's order is law of the case. See State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (finding trial court's ruling not challenged in appellate brief is law of the case).

Further, although additional issues were raised at the PCR hearing, Petitioner only raises five specific issues in his petition that were not ruled upon. Petitioner has thus waived a remand on any additional allegations raised at the hearing but not specifically ruled upon. This Court should limit the remand to the consideration of issues that Petitioner requested be considered. Respondent agrees that four of the five issues raised in the Petition for a Writ of Certiorari should be remanded to the PCR court for specific rulings. However, the issue regarding the alleged Doyle violation was not adequately raised to the PCR court and thus should not be remanded for further consideration.

CONCLUSION

Based on the foregoing, Respondent requests this Court order a limited remand to allow the PCR court to issue a supplemental order addressing whether counsel was ineffective for (1) allegedly advising Petitioner to reject a plea offer because he would prevail on appeal if convicted; (2) not objecting to testimony by the victim's mother that she saw semen on the victim; (3) not arguing as part of his motion for a directed verdict that no evidence showed the victim *submitted* to a sexual assault because of being kidnapped or confined; and (4) as to appellate counsel, not arguing a directed verdict should have bene granted on first-degree CSC.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

DANIELLE DIXON, 73999
Assistant Attorney General

Danielle Dixon, 73999
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-3737
DanielleDixon@scag.gov

ATTORNEYS FOR THE RESPONDENT

This 6th day of August, 2025.

The Supreme Court of South Carolina

Leslie Twyman, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2024-001271

ORDER

Petitioner's application for post-conviction relief was denied by Judge Edgar W. Dickson. No notice of appeal was filed. Petitioner now seeks a writ of certiorari from an order issued by Judge Kristi F. Curtis granting Petitioner a belated review of Judge Dickson's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

We grant the petition for a writ of certiorari from Judge Curtis's order. However, because Judge Dickson's order contains insufficient findings of fact and conclusions of law regarding Petitioner's PCR allegations, we cannot conduct an *Austin* review of the order. Therefore, we vacate Judge Dickson's order and remand this matter to the circuit court to issue an order that complies with section 17-27-80 of the South Carolina Code (2014) and Rule 52(a), SCRCP. The circuit court shall be limited to a review of the transcript of the PCR hearing presided over by Judge Dickson and the record that was before him in preparing the amended order. The order shall be issued within forty-five days of this Court's mailing of the remittitur, and any aggrieved party may serve and file a new notice of appeal from the amended order.

[signature] C.J.

[signature] J.

_______________ J.

_______________ J.

_______________ J.

Columbia, South Carolina
November 19, 2025

cc:
Danielle Dixon
Jordan Millen Wayburn
The Honorable Gary Hale

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) IN THE FOURTEENTH JUDICIAL CIRCUIT

Leslie Twyman, #345787,) CASE NO. 2014-CP-15-00127

Applicant,

v.

State of South Carolina,

Respondent.

RECEIVED
Mar 06 2026
S.C. SUPREME COURT

ORDER OF DISMISSAL WITH PREJUDICE

FEB 25 2026 AM 11:57
COLLETON CO CP, GARY HALE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 11, 2014. On November 19, 2025, the Supreme Court of South Carolina issued an Order vacating the original order of dismissal for insufficient findings of fact and conclusions of law and remanded the matter back to this Court. This Order follows:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted in October 2010 and January 2011 by the Colleton County Grand Jury for criminal sexual conduct – first degree (CSC-1st) (2010-GS-15-0849) and criminal sexual conduct – third degree (CSC-3rd) (2010-GS-15-0849). Harris S. Beach (Trial Counsel) of the Colleton County Public Defender's Office represented Applicant. Assistant Solicitor Ben Shelton of the Fourteenth Circuit Solicitor's Office prosecuted the case.

On April 18, 2011, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner, III, circuit court judge. The jury convicted Applicant as indicted, and on April 20, 2011, Judge Buckner sentenced Applicant to imprisonment for twenty-five years for CSC-1st and for ten years for CSC-3rd, with both sentences to be served concurrently.

Applicant's Direct Appeal

Applicant timely filed a Notice of Appeal. Appellate Defenders Elizabeth Franklin-Best and Susan B. Hackett (Appellate Counsel) from the South Carolina Commission on Indigent Defense-Office of Appellate Defense perfected the appeal by raising the following:

(I) The trial court judge erred when he did not grant appellant's motion for a directed verdict for criminal sexual conduct, 3rd degree because the language in the body of the indictment indicated that the state was proceeding under a theory that appellant "forcibly" penetrated the accuser which negated the aggravated component of the CSC 3rd statute which also proscribes sexual conduct against persons who are "mentally incapacitated."; and

(II) The trial court judge erred in not granting appellant's motion for a directed verdict because the accuser was not mentally defective or incapacitated as defined under S.C. Code Ann. § 16-3-651(e) or (f).

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Leslie Twyman, Op. No. 2013-UP-325 (S.C. Ct. App. filed July 17, 2013). The Remittitur was returned to the circuit court on August 9, 2013.

Applicant filed a timely Notice of Appeal. The Appeal was perfected by Appellate Defenders Elizabeth Franklin-Best and Susan Hackett. Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Twyman, No. 2013-UP-325 (S.C. Ct. App. July 17, 2013). The Remittitur was sent on August 9, 2013.

Applicant's Initial Post-Conviction Relief Action: 2014-CP-15-00127

Applicant filed his first application for post-conviction relief on February 11, 2014. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
   a. Trial Counsel only renewed motion for directed verdict on third-degree criminal sexual conduct and not first-degree criminal sexual conduct
   b. Trial counsel should have objected to Solicitor leading the witnesses
2. Ineffective Assistance of Appellate Counsel;

a. On third-degree criminal sexual conduct, more to be amended later.

As requested relief, Applicant stated he was seeking a vacation of his conviction and sentences and/or a new trial and/or resentencing.

The State made its return on August 20, 2014, requesting that an evidentiary hearing be held. An evidentiary hearing was held on October 29, 2014, before the Honorable Edgar W. Dickson, circuit court judge. Applicant was represented by Tristan Shaffer, Esquire. Trial Counsel and Appellate Counsel Hackett both testified at the evidentiary hearing, as did Applicant. Following the evidentiary hearing, Judge Dickson denied and dismissed the application with prejudice by filed order on December 21, 2015. Applicant did not file an appeal.

Applicant's Second Post-Conviction Relief Action: **2019-CP-15-00484**

Applicant filed his second application for post-conviction relief on June 24, 2019. In that application, Applicant alleged he was entitled to belated appellate review of his initial post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). He also stated he was entitled to raise any issues not adequately addressed in the order denying his first PCR and that his prior PCR counsel failed to file any necessary motions pursuant to Rule 59(e), SCRCP. Applicant attached several exhibits to his post-conviction relief application, including unfiled *pro se* motion to alter or amend the order denying his first application, correspondence he sent prior PCR counsel Shaffer, an affidavit from prior PCR counsel Shaffer acknowledging that Shaffer failed to file any post-trial motions or appeals on Applicant's behalf, a letter Applicant sent the South Carolina Supreme Court, and the response from the Court.

The State made its Return and Partial Motion to Dismiss on July 1, 2020. An evidentiary hearing was convened on July 20, 2022, at the Beaufort County Courthouse before the Honorable Kristi F. Curtis, circuit court judge. Applicant was present at the hearing and was represented by

James F. Falk, Esquire. Assistant Attorney General Lauren Mims of the South Carolina Attorney General's Office represented the State. Applicant testified on his own behalf, and called Applicant's former PCR counsel, Tristan M. Shaffer, Esquire. On July 25, 2024, Judge Curis granted Applicant relief pursuant to Austin v. State and denied all other allegations.

Applicant filed a timely Notice of Appeal. Jordan M. Wayburn from the South Carolina Commission on Indigent Defense-Office of Appellate Defense filed a petition for writ of certiorari pursuant to Austin v. State raising the following:

(I) Whether the PCR court correctly found petitioner was entitled to a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), where defense counsel candidly admitted petitioner wanted him to file an appeal, he neglected to file that appeal, and the state conceded petitioner was entitled to Austin relief

(II) Whether this Court should remand petitioner's case to the PCR court where the circuit court determined it did not have the authority to order the remand where former PCR counsel admitted his deficiency in failing to a Rule 59(e) motion to reconsider even though the PCR order failed to make specific findings of fact and conclusions of law in accordance with S.C. Code Ann. § 17-27-80 since a remand is proper in these circumstances pursuant to Fishburne v. State, 427 S.C. 505,515,832 S.E.2d 584,589 (2019).

The State filed its return on August 6, 2025. On November 19, 2025, the South Carolina Supreme Court issued a filed order vacating this Court's December 21, 2015, order and remanding the matter back to this Court to issue an order that complies with § 17-27-80 of the South Carolina Code (2014) and Rule 52(a), SCRCP.

SUMMARY OF FACTS ADDUCED AT TRIAL

Twyman was staying at Jessie Mae Gooding's residence. He lured his eighteen-year-old victim (Victim) into the residence under false pretenses and proceeded to rape her. Victim has an I.Q. of 55 and is emotionally developed at the equivalent of a six or seven-year-old. (Trial Tr. p. 142; 144).

Jessie Mae Gooding was the State's first witness. Her involvement in her church's outreach program led her to let Twyman, and sometimes his wife, stay with her after he lost his home. Gooding's son Conrad is a disabled, bedridden veteran. Victim lived down the street. Sometimes, Victim would come to the house and sit with Conrad. However, Gooding supervises her and brings Victim back and forth from the house when Victim sits with Conrad. Gooding would ask Victim's mother first before asking Victim over to the house. (Trial Tr. pp. 63–66).

On August 21, 2010, Gooding was away while Twyman was home with Conrad. Twyman called Gooding on the cell phone and said a friend was picking him up at the house, and he would have Victim sit with Conrad. Gooding gave it some thought, then called back because Twyman had told him the night before that he had no friends. Victim answered the phone. Victim said Twyman was outside. Later, Victim's mother called Gooding, and consequently, Gooding called Twyman and said an accusation was made against him. Twyman denied the accusation. Gooding went to Victim's house, where police were already interviewing Victim. Victim was upset and said she was feeling pain. (Trial Tr. pp. 67–73).

Victim's stepfather (Stepfather) testified that he was outside in the yard when Victim came running to the house and said, "Mamma, Mamma, something happened to me down the street, this man attacked me." (Trial Tr. p. 88). Victim's Mother (Mother) testified Victim came home disturbed and too upset to speak clearly; it took her ten minutes to calm down. Stepfather called 911. Mother took Victim to the bathroom and saw white semen in her underwear. (Trial Tr. pp. 99–104).

The forensic DNA analyst was able to determine there was semen in the underwear, but because there was no sperm, she was unable to complete a DNA analysis. (Trial Tr. pp. 171–173).

The sexual assault examination revealed extensive swelling and redness in the vaginal and anal areas. Specifically, the findings were redness and swelling in the labia majora, perineum, and labia minora, with swelling in the vestibule and redness in the posterior fourchette. There was swelling and redness in the vagina in general. There was redness and bleeding in the cervix. (Trial Tr. pp. 248–249). Maria Flynn, an RN, testified that the injuries were consistent with a vaginal assault and blunt force trauma on the cervix. (Trial Tr. pp. 261–262).

Mother testified that Victim is not allowed to leave the house without permission, which she did that day. (Trial Tr. pp. 108–109). Mother explained, "She has to realize she can't do what she want to do because she 18." (Trial Tr. p. 112).

Officer Brandon Craven responded to the 911 call. He testified he never met Victim before, but he quickly determined that she not only had a speech impediment, but that she was mentally handicapped as well. Victim was upset and shocked. (Trial Tr. pp. 113–116). Detective Gathers, who also came to the house, testified that Victim was upset the entire time he was there, which was about two hours. (Trial Tr. pp. 121–122).

Patty Lohr is a language pathologist who has worked with Victim for four years. Victim has verbal apraxia. (Trial Tr. pp. 130–131). On cross-examination, Lohr was asked about Victim's cognitive functioning, to which she responded: "Jessica is more on a child-like level. Academically, her levels are lower. But as far as common sense type things, she's right on the money." (Trial Tr. p. 134).

Carol Marks is Victim's special education teacher and testified that Victim's overall I.Q. is 55. She is mildly mentally disabled. Her reading is at a third-grade level, her math at a second-grade level. Marks was asked about an equivaleut age for Victim's emotional needs, and she responded that Victim's emotional needs were equivalent to a six or seven-year-old. (Trial Tr. pp. 142–144). Marks further testified as follows:

> Q: Psychological. Or her ability to experience the world around her and comprehend the world around them. How they're - specifically, what they do today, how is it going to affect them tomorrow? Is she able to grasp, the decisions that she makes today, what bearing that's going to have tomorrow?
> A: Somewhat. I ... wouldn't say it would be like an adult, like her age level, an 18 year old, no, absolutely not but the basic age level of a six or seven year old, they know if they break the TV, that they're going to be in trouble for a couple days. She has that ability. But long term, I would say no. She's not able to do that.
> Q: Is she able to comprehend the effect on herself and others of her own action, to the point of a normal functioning person.
> A: No.
> Q: Can you be specific about that?
> A: Just the fact that, like I said, she's a six or seven year old in her mind. So she's not - she is looking out for herself, just like any six year old will do. They're - they're in their own time frame, their own kind of world.
> Q: So she's not, to a certain degree, able to appraise the nature of her actions?
> A: To a certain degree.

(Trial Tr. pp. 144–145). Marks testified that she believed Victim would always need someone to care for her. (Trial Tr. p. 146). Marks also testified that since August 2010, Victim has retreated into herself. (Trial Tr. p. 149).

Elizabeth Schein-Pearson testified that Victim qualifies for special services at her school with a primary disability of mental disability. Victim had an I.Q. of 56 on December 8, 2010. Pearson testified that Victim does not think fast on her feet. Pearson opined Victim will always need someone to assist her in understanding her world. (Trial Tr. pp. 156–157). On cross-examination, Pearson testified that often times she does not appreciate the outcome of her actions. Pearson also testified, when questioned about whether Victim knew right from wrong, that Victim can appreciate the parameters of what is expected of her: "[b]ut if she's to infer that something she has not experienced before or no one's told her about before, she's deferred the outcome of that. She's not going to be able to." (Trial Tr. p. 160).

Victim testified that she was at home watching television when Twyman knocked on the door and asked her to watch Ms. Gooding's son. She went to Gooding's house and was watching a cartoon. Twyman said he wanted her to be a model. Then he unzipped Victim's pants, took a picture of her privates with a cell phone. She went into the bathroom. When she came out, Twyman put his penis in her mouth and put his penis in her butt two times. Then he put his penis in her private part. Twyman threatened Victim by telling her she could go to jail if she told what happened. Victim ran out the back door after Twyman blocked her from going out the front door. She ran home and told her mother what happened. (Trial Tr. pp. 187–200).

Twyman testified on his own behalf. He testified he was staying with Gooding because he and his wife had a bad drug habit. The wife went to jail because they had a domestic violence incident, and they lost their apartment. Twyman confirmed that he called Gooding to let her know he was going to have Victim watch her son. In his version of events, when he went to ask Victim to sit with Conrad, Stepfather answered the door. Victim's sister walked Victim halfway to Gooding's house, and Twyman took her the rest of the way. According to Twyman, while they both smoked, they had a conversation about school, Victim said she was going to college. Twyman testified that Victim complimented Twyman on a suit he had worn previously. Twyman claimed Victim asked Twyman about his wife and their relationship. Twyman testified, "We was just talking cool, regular and stuff." (Trial Tr. pp. 282–283). Twyman also testified that Victim said she had intercourse with her stepfather. (Trial Tr. p. 284).

CURRENT ACTION BEFORE THIS COURT

This Court held a status conference on this matter on December 18, 2025. Jordan M. Wayburn, Esquire, represented Applicant. Senior Assistant Deputy Attorney General D. Russell

Barlow, II, represented Respondent. By agreement of the parties, the following issues were raised to this Court at the initial post-conviction relief evidentiary hearing:

1) Ineffective Assistance of Trial Counsel
   a) Failure to object to the Doyle issue.
   b) For not making that directed verdict argument, if it was not preserved.
   c) ~~Failure to impeach the victim through the use of the DVD statement.~~[1]
   d) Failure to move to have the solicitor elect between CSC 1st and CSC 3rd.
   e) Failure to object to the mother's statements about seeing semen.
   f) ~~Failure to argue the victim might have been lying because she did not make eye contact, as opposed to state's theory she was ashamed.~~[2]
   g) For advising Applicant not to accept the plea offer because "the CSC first would likely get thrown out later on."
2) Ineffective Assistance of Appellate Counsel
   a) For not arguing directed verdict was proper on the CSC 1st charge because there was no evidence the victim "submitted" in connection to the kidnapping under subsection (b) of the CSC 1st statute.

Additionally, during the status conference, this Court requested that the parties submit briefs addressing the issues raised at the initial PCR evidentiary hearing.

Standard of Review

The Uniform Post-Conviction Procedure Act[3] (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2) That the court was without jurisdiction to impose sentence;
3) That the sentence exceeds the maximum authorized by law;
4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

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[1] Applicant, through counsel, withdrew this allegation.
[2] Applicant, through counsel, withdrew this allegation.
[3] S.C. Code Ann. §§ 17-27-10 to -160.

6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the parties' briefs, the records before it, including the Colleton County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1a: Ineffective Assistance of Trial Counsel for failure to object to the Doyle issue.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to object to the Doyle[4] issue. This Court finds this allegation is without merit.

Under the United States and South Carolina Constitutions, criminal defendants have a constitutional right not to be compelled to incriminate themselves during trial. See U.S. Const. amend. V (prohibiting a criminal defendant from being "compelled in any criminal case to be a witness against himself[.]"); S.C. Const. art. I, § 12 ("[N]or shall any person be compelled in any criminal case to be a witness against himself."). Pursuant to that right, both comments by the prosecution on a defendant's silence and instructions by the trial judge indicating a defendant's silence constitutes evidence of guilt are prohibited. Griffin v. California, 380 U.S. 609, 615 (1965); see Doyle v. Ohio, 426 U.S. 610, 618 (1976) ("[W]hile it is true that the Miranda warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.").

"In particular, the State may neither comment upon nor present evidence at trial of a defendant's decision to exercise his right to remain silent[.]" Edmond v. State, 341 S.C. 340, 346,

[4] Doyle v. Ohio, 426 U.S. 610, 618 (1976).

534 S.E.2d 682, 685 (2000); see McFadden v. State, 342 S.C. 637, 640, 539 S.E.2d 391, 393 (2000) ("Specifically, the solicitor must not comment, either directly or indirectly, on a defendant's silence, failure to testify, or failure to present a defense."); State v. Weaver, 361 S.C. 73, 88-89, 602 S.E.2d 786, 794 (Ct. App. 2004) ("As a corollary of this right, a prosecutorial comment, whether direct or indirect, upon a defendant's failure to testify at trial is constitutionally impermissible."). "The obvious purpose [of that prohibition] is to try to prevent jurors from improperly inferring the accused is guilty simply because he exercised rights guaranteed him by the state and federal constitutions." Edmond, 341 S.C. at 346, 534 S.E.2d at 685; see Wainwright v. Greenfield, 474 U.S. 284, 292 (1986) ("The point of the Doyle holding is that it is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony.").

However, the mere mention of a defendant's decision to exercise his right to remain silent during trial does not automatically constitute reversible error. See State v. Truesdale, 285 S.C. 13, 17, 328 S.E.2d 53, 56 (1984) ("When such a violation occurs, the question remains, however, whether it is cause for reversal or is harmless error beyond a reasonable doubt."), rev'd on other grounds by Truesdale v. Aiken, 480 U.S. 527 (1989). Instead, such testimony requires reversal only when its admission results in prejudice to the defendant. Gill v. State, 346 S.C. 209, 221, 552 S.E.2d 26, 33 (2001); see State v. Johnson, 306 S.C. 119, 129, 410 S.E.2d 547, 553 (1991) (declining to reverse Johnson's conviction as a result of the introduction of testimony establishing Johnson invoked his right to counsel after determining the admission of that testimony was not prejudicial to Johnson's case). Significantly, the burden rests upon the defendant to establish the admission of the testimony deprived him of a fair trial. Gill, 346 S.C. at 221, 552 S.E.2d at 33; see also Weaver, 361 S.C. at 89, 602 S.E.2d at 794 ("[A]lthough it is improper for the solicitor to indirectly comment on a defendant's failure to testify, such comments do not necessarily mandate reversal of a conviction. Indeed, a criminal defendant is entitled to a fair trial, not a perfect one.").

In determining whether the defendant was prejudiced by the admission of testimony concerning his post-arrest silence, any error resulting from the admission of that testimony will not result in reversal if a review of the entire record establishes the error was harmless beyond a reasonable doubt. State v. Arther, 290 S.C. 291, 296, 350 S.E.2d 187, 190 (1986); see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"). In reviewing the record to determine whether an error was harmless, the following factors should be considered: (1) whether the reference to defendant's right to remain silent was a single reference; (2) whether the reference was repeated or alluded to at another point during trial; (3) whether the prosecutor tied the defendant's exercise of his right directly to his exculpatory story; (4) whether the exculpatory story was totally implausible; and (5) whether the evidence of guilt was overwhelming. Edmond, 341 S.C. at 348, 534 S.E.2d at 686-687; see Truesdale, 285 S.C. at 18-19, 328 S.E.2d at 56 (identifying the factors relied upon in the opinion of the Fifth Circuit Court of Appeals in Chapman v. United States, 547 F.2d 1240 (5th Cir. 1977), as relevant factors to be considered in determining if a Doyle violation is harmless).

However, none of those factors is alone dispositive, and the specific circumstances of each case should be considered individually on a case-by-case basis to determine whether the error was harmless beyond a reasonable doubt. Truesdale, 285 S.C. at 19, 328 S.E.2d at 56; see Alderman v. Austin, 695 F.2d 124, 126, n. 7 (5th Cir. 1983) (instructing that the factors for determining whether a Doyle violation is harmless identified in Chapman v. United States, 547 F.2d 1240 (5th

Cir. 1977), are not to be treated as rigid rules or applied strictly to all cases); see also United States v. Shaw, 701 F.2d 367, 382 (5th Cir. 1983) ("Subsequent cases have illustrated, however, that factual situations are not always amenable to description with the rigid Chapman types. Consequently, we have held Chapman inapplicable and the error to be harmless even though the defendant's story is 'not totally implausible,' but the evidence of guilt is 'substantial.' " (citations omitted)); see, e.g., State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding [of harmlessness]; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.").

Trial

At trial, the following colloquy occurred during the direct examination of Detective Jodi Taylor:

Q: And also in this case, did you have an opportunity to interview Mr. Twyman?
A: Yes, I did.
Q: Did you Mirandize him?
A: I did.
Q: Did he fill out a Miranda form?
A: He did fill out the Miranda form, yes.
Q: Would he make any statement to you?
A: He would not -- he refused to sign and waive his rights and make a statement.

(Trial Tr. p. 216).

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On direct examination, the following colloquy occurred with Applicant:

Q: Now, at some point in your transcript, the -- or at some point during your trial, the Solicitor had asked one of the officers, or one of the detectives, if you ever made any statement to them. Do you recall that?
A: Sir, yes, sir.
Q: And they said, no, you had not. Is that correct?

A: Sir, yes, sir.
Q: Do you think your attorney should have objected to that
A: Sir --
Q: -- as a comment on your right to remain silent?
A: Sir, yes, sir.

(2014 PCR Tr. pp. 54–55).

On redirect examination of Trial Counsel, he testified that he did not think the line of questioning was objectionable. (2014 PCR Tr. p. 62).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that the record does not support Applicant's assertion that this was a Doyle violation. The testimony regarding Applicant's refusal to waive Miranda rights was a brief, factual statement about the investigation's chronology rather than an improper comment on his right to remain silent.

Assuming, *arguendo*, this block of testimony was a Doyle violation, we turn to the factors outlined in Edmond and Truesdale, *supra*. First, the reference to the Applicant's right to remain silent was singular. Second, this reference was neither reiterated nor alluded to at any other juncture during the trial. Third, the Solicitor did not connect the Applicant's right to remain silent with his testimony. Importantly, this allegation arises from approximately 9 lines of testimony on a single page from a single witness throughout the trial. The Solicitor did not reference the Applicant's invocation of his Constitutional rights in his closing statement. The brief mention of the Applicant's exercise of his Constitutional rights constitutes, at most, a harmless error, as it was mentioned only once and not referred to again during the trial. Furthermore, the Solicitor did not attempt to leverage the invocation of the Applicant's rights against him, nor did he utilize this testimony in his closing remarks. Consequently, the Applicant has not demonstrated any deficiency on the part of counsel, nor has he shown that he was prejudiced by any purported deficiency.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation is **DENIED** and **DISMISSED.**

Allegation 1b: Ineffective Assistance of Trial Counsel for failure to make and preserve the directed verdict argument.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for not making that directed verdict argument, if it was not preserved. This Court finds this allegation is without merit.

When considering a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Larmand, 415 S.C. 23, 30, 780 S.E.2d 892, 895 (2015) (citing Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). The role of the trial court is only to determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016). If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling.

State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). "In deciding motions for a directed verdict. . . the evidence and all reasonable inferences which may be drawn from it must be viewed in the light most favorable to the non-moving party. If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury." Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 611, 518 S.E.2d 591, 597 (1999).

"[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict . . . must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (citing State v. Fogle, 256 S.C. 149, 181 S.E.2d 483 (1971)). The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

Findings

Applicant contends that Trial Counsel failed to appropriately make and preserve the directed verdict argument on both charges for CSC-1st and 3rd. This matter is easily resolved from the record before this Court, where, before sentencing, Trial Counsel renewed the motion for a directed verdict and moved for a new trial. The trial court ruled as follows:

> I believe there was clearly evidence introduced during the trial of this case that supported both of those offenses. And for that reason, I respectfully deny your motion for directed verdict as to Count Two at the close of the case and at the close of all the evidence, and I decline now to grant a new trial, or substitute this Court's judgment for that of the jury, when I think the jury clearly had sufficient evidence from which to convict your client of both counts.

(Trial Tr. p. 352). The trial court's ruling precludes any finding of prejudice. It is clear from the record that even if Trial Counsel had properly raised the motion for a directed verdict on both counts, it would not have been successful, and Applicant cannot show any prejudice from the alleged deficiency. See State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 477–78 (2004) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."). Here, the record provides that evidence was presented to the trial court supporting the charges. Any motion for a directed verdict would have been denied. See State v. Ham, 268 S.C. 340, 342, 233 S.E.2d 698, 698 (1977) ("Where the determination of guilt is dependent upon the credibility of the witnesses, a motion for a directed verdict is properly refused.").

This Court addresses the preservation argument at **Allegation 2a,** *infra.*

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation is **DENIED** and **DISMISSED.**

Allegation 1d: Ineffective Assistance of Trial Counsel for failure to move to have the Solicitor elect between CSC-1st and CSC-3rd.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to move to have the solicitor elect between CSC-1st and CSC-3rd. This Court finds this allegation is without merit.

2014 PCR Evidentiary Hearing

Trial Counsel testified that this issue was raised with the judge, that they had researched the matter, and that case law indicated that the solicitor could proceed on both charges because of differences in the statutes. (2014 PCR Tr. 45). Trial Counsel further testified he thought the State presented sufficient evidence to support the charges Applicant was facing. (2014 PCR Tr. 44, 45).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra.* Applicant did not provide any basis that Trial Counsel could have moved to have the Solicitor only pursue one charge. See Ball v. United States, 470 U.S. 856, 859, 105 S. Ct. 1668, 1670, 84 L. Ed. 2d 740 (1985) (finding the Supreme Court has long acknowledged the Government's broad discretion to conduct criminal prosecutions, including its power to select the charges to be brought in a particular case).

The South Carolina Supreme Court held that the Blockburger same-elements test is the only test for determining a double jeopardy violation in both multiple-punishment and successive-prosecution cases. Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 437 (1999). The court emphasized that the focus should be on the elements of the offenses, not on their application to specific facts of the case. Id. Applying this framework to criminal sexual conduct degrees, the offenses contain distinct elements. CSC-1st requires proof of aggravating circumstances such as aggravated force, concurrent victimization, or drugging. S.C. Code Ann. § 16-3-652. CSC-3rd contains alternative elements, including knowledge "that the victim is mentally defective, mentally incapacitated, or physically helpless, and aggravated force or aggravated coercion was not used to accomplish sexual battery." S.C. Code Ann. § 16-3-654(1)(b). This distinct element structure suggests the offenses would satisfy the Blockburger test for separate convictions. See State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000) (overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (in affirming vacation of defendant's conviction for third degree CSC pursuant to § 16–3–654(1)(b) where defendant was indicted only for first degree CSC, court stated former was not a lesser included offense of latter because it contained two additional elements not included in the latter)).

Additionally, the record before this Court shows that Trial Counsel presented the argument to the trial court, which rejected it, relying on McFadden, *supra*. (Trial Tr. pp. 349–352). Any motion by Trial Counsel on this matter would not have been successful. Furthermore, this Court finds that CSC-1st and CSC-3rd are statutorily different as CSC-3rd contains different elements and they are legally distinct offenses that can support separate convictions.

Based on the foregoing, this Court finds Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonable, effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation is **DENIED** and **DISMISSED.**

Allegation 1e: Ineffective Assistance of Trial Counsel for failure to object to mother's statements about seeing semen.

Applicant alleged that Trial Counsel's representation was constitutionally ineffective for failing to object to the mother's statement involving seeing what she thought to be semen.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller

v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect." Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

2014 PCR Evidentiary Hearing

Trial Counsel testified that it would have been a little late to object to the mother's comment about the semen, assuming no DNA match was able to be made, because the mother testified prior to the DNA expert. (PCR Tr. 42). Further, Trial Counsel testified that he did not think he had any basis to object to it. (PCR Tr. 46). Applicant agreed that the State's DNA expert testified that the victim's vaginal swab showed semen.

Findings

In a post-conviction relief action, a Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813, 814 (1985). Applicant failed to set forth a valid, legal objection that Trial Counsel should have made. Trial Counsel articulated that he did not object because he did not think he had any basis to object to it. Furthermore, Trial Counsel testified that the DNA expert testified *after* the mother, and it would have been a "tad late" to then object. Applicant merely alleged that Trial Counsel should have objected without setting forth on *what* grounds. Notably, Forensic DNA analyst Amanda Webb testified at trial that she found semen on the vaginal swabs collected in the sexual assault kit of the Victim. (Trial Tr. pp. 163–173).

Nevertheless, even if this Court were to find this testimony was objectionable, this Court cannot find that, but for this question, there is a reasonable probability the outcome of the trial would have been different if the DNA expert testified to finding semen. See Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) ("A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial."). Furthermore, this Court finds that any objection would not have been meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

Allegation 1g: Ineffective Assistance of Trial Counsel for misadvising Applicant not to accept the plea offer because "the CSC first would likely get thrown out later on."

Applicant alleged that Trial Counsel's representation was ineffective for advising Applicant not to accept the plea offer because "the CSC first would likely get thrown out later on." This Court finds this allegation is without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g. Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist."); Lee v. United States, 582 U.S. 357 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea). To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

2014 PCR Evidentiary Hearing

On direct examination, Applicant testified that he rejected the plea offer because Trial Counsel told him that if he took it to trial and lost, the higher court would throw it out. (2014 PCR Tr. p. 49).

Trial Counsel testified that he informed Applicant of the plea offer, and Applicant stated that he did not commit the crime and would not accept the offer. (2014 PCR Tr. p. 39). Trial Counsel testified that he reviewed what Applicant was charged with and the maximum sentence Applicant could receive. (2014 PCR Tr. p. 39). Trial Counsel testified that he told Applicant that DNA was an element and that it was evidence that would help him, not that they would throw out his conviction. (2014 PCR Tr. p. 59).

Findings

This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Trial Counsel's testimony persuasive on this issue and Applicant's testimony not persuasive. This Court is convinced that Trial Counsel did not tell Applicant his charges would be thrown out on appeal if he lost at trial. Applicant was fully apprised of the plea offer and chose to reject it and proceed to trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED.**

Ineffective Assistance of Appellate Counsel

Allegation 2a: Ineffective Assistance of Appellate Counsel for not arguing that a directed verdict was proper on the CSC 1st charge because there was no evidence the victim "submitted" in connection to the kidnapping under subsection (b) of the CSC 1st statute.

Applicant alleged Appellate Counsel's representation was constitutionally ineffective for not arguing a directed verdict was proper on the CSC 1st charge because there was no evidence the victim "submitted" in connection to the kidnapping under subsection (b) of the CSC 1st statute. This Court finds this allegation to be without merit.

If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2dat 826; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error). Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." State v. Robbins, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy ..." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Findings

As an initial matter, the burden of proof lies with the Applicant. See Butler, *supra*. Appellate Counsel testified on this matter, yet her statements were largely speculative. Crucially, she did not assert that she would have chosen to raise this issue or that doing so would have likely resulted in a favorable outcome. Instead, Appellate Counsel merely speculated about the issue's validity, indicating she "would have wanted the opportunity to conduct research and determine whether to present that issue." It is important to underscore that Appellate Counsel who testified at the PCR hearing was not the same defender who filed the initial briefing on appeal. Additionally, the appellate defender who wrote the initial brief was not called to testify at the evidentiary hearing.

Nevertheless, the plain language of CSC-3rd statute at that time was read into the record by Appellate Counsel as follows:

> The CSC first charge that the indictment specifically was under Subpart (b), which was the victim submits to sexual battery by the act, or under circumstances where the victim is also the victim of forcible confinement, kidnap[p]ing, extortion, et cetera. So, it's Subpart (b), dealing with kidnap[p]ing, generally.

(2014 PCR Tr. p. 22). Appellate Counsel testified that the act of submitting and kidnapping would have had to occur simultaneously. (2014 PCR Tr. pp. 22–24). This Court disagrees. Contrary to Appellate Counsel's interpretation of the statute, there is no requirement that the submission and kidnapping occur simultaneously; rather, the submission and kidnapping can occur concurrently. Appellate Counsel's interpretation was simply splitting hairs unnecessarily. Applicant deliberately lured a handicapped girl to his home with the intention of committing rape. Therefore, the act of kidnapping was established at the moment he inveigled her to come over, and it was during this kidnapping that he raped her. While this Court is not lost on Appellate Counsel's desire to explore this issue further, such an assertion falls short of demonstrating any deficiency or prejudice on appellate counsel's part.

Ultimately, this Court must decide whether, had the issue been raised, the Applicant would have succeeded on appeal. See State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate."). As previously stated, the evidence presented at trial was that Applicant inveigled the victim to his house and then raped her. There was also evidence that after the rape, she attempted to leave, and he blocked the exit. See State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984) (stating if the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt can be fairly and logically deduced, the case must go to the jury). Any notion that Applicant would have prevailed on this issue on appeal is wildly speculative, contrary to logical sense, and goes against the plain reading of the statute.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Appellate Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[CONCLUSION & SIGNATURE PAGE FOLLOWS]

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post–conviction relief is **DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post–Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23rd **day of** February **, 2026.**

Edgar W. Dickson
Presiding Judge
Ninth Judicial Circuit

Orangeburg, South Carolina

Edgar Warren Dickson

803-837-1777
~~edgarwd43@gmail.com~~
edicksonj@sccourts.org

P. O.Box1805
Orangeburg, SC 29116-1805

February 23, 2026

Honorable Gary Hale
Colleton County Clerk of Court
PO Box 620
Walterboro, SC 29488-0028

Re: Leslie Twyman PCR order, 2014-CP-15-00127

Dear Mr. Hale

Enclosed please find the original order and a copy in the above referenced case. Please file the original and return the clocked-in copy. Thank you for your assistance. Sincerely,

Edgar Warren Dickson
Active/Retired Circuit Court Judge

FEB 25 2026 AM 11:57
COLLETON CO CP, GARY HALE

623

STATE OF SOUTH CAROLINA [redacted]) IN THE COURT [redacted] GENERAL SESSIONS

UP T[redacted]30 yrs

COUNTY OF Colleton)
STATE VS.) INDICTMENT/CASE#: 2010GS1500849
Leslie Twyman) A/W#: M103371
AKA:) Date of Offense: 8/21/2010
Race: B Sex: M Age: 40) S.C. Code § : 16-03-0652
DOB: [redacted] SS#: [redacted]) CDR Code #: 0160
Address:)
City,State,Zip:)
DL#: SID#:) SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Criminal Sexual Conduct 1st degree

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ______ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelton, Ben	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with **probation** for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00849 Count II (Third Degree CSC)

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other: ______

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ ~~Deputy~~ Clerk Patricia G. Grant

Court Reporter: Rebecca Hall

Presiding Judge [signature]

Judge Code: 0122

Sentence Date: 4/20/2011

SCCA/217 (03/2011)

624

STATE OF SOUTH CAROLINA | **IN THE COURT OF GENERAL SESSIONS**

COUNTY OF Colleton [redacted]

up + [redacted] Cyrs

STATE VS. Leslie Twyman

INDICTMENT/CASE#: 2010GS1500849

AKA:

A/W#: M103371

Date of Offense: 8/21/2010

Race: B Sex: M Age: 40

S.C. Code § : 16-03-0654

DOB: [redacted] SS#: [redacted]

CDR Code #: 162

Address:

City,State,Zip:

DL#: SID#:

SENTENCE SHEET

*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Criminal Sexual Conduct - 3rd degree

in violation of § 16-3-654 of the S.C. Code of Laws, bearing CDR Code # 162

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ______ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelton, Ben | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed ______ years and/or to pay a fine of $ ______; provided that upon the service of ______ days/months/years and/or payment of $ ______; plus costs and assessments as applicable*; the balance is suspended with probation for ______ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-15-00849 (First Degree CSC) Count I

☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ ______ plus 20% fee: ______ $ ______

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ______

______ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ______

May serve W/E begining ______

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ______ beginning ______

$ ______ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ ~~Deputy Clerk~~ Patricia C. Grant

Court Reporter: Rebecca Hall

Presiding Judge [signature]

Judge Code: 0122

Sentence Date: 4/20/2011

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2010GS1500849

At a Court of General Sessions, convened on April 14, 2011, the Grand Jurors of Colleton County present upon their oath:

COUNT 1:

Criminal sexual conduct - First degree

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, Jessica Fredericks, and that the Defendant committed the sexual battery upon the Victim while the Defendant did also kidnap forcibly confine, rob, extort, burglarize or commit any other similar offense or act upon the victim, to wit; the Defendant did lure the mentally challenged victim into his home by false pretense and/or did forcibly prevent her from leaving; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976), as amended.

COUNT 2:

Criminal sexual conduct - Third degree: Mental Defect, Mental Incapability, Etc.

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, Jessica Fredericks, with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless, to wit: the Defendant did force sexual intercourse upon the mentally disabled victim; all in violation of Section 16-03-654(1)(b), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Isaac M. Stone, III
Solicitor

TRUE BILL

WITNESSES

J. Taylor

ARREST WARRANT NUMBER

M103371

August 27, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 4/14/2011

VERDICT

Count 1 Guilty 4/20/11

Count 2 Guilty 4/20/11

Larry M. Carter Jr.
Foreperson of Petit Jury
Date: 4/20/2011

INDICT

DOCKET NO. 2010GS1500849

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

Leslie Twyman

Indictment for

COUNT 1:
Sex / Criminal sexual conduct - First Degree

SC Code: 16-03-0652
CDR Code:0160

COUNT 2:
Sex / Criminal sexual conduct – Third Degree
(Mental Defect, Mental Incapacity, Etc.)
SC Code: 16-03-0654(1)(b)
CDR Code: 0162
Amended Indictment: April 14, 2011

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 APR 14 AM 10:56

STATE OF SOUTH CAROLINA) INDICTMENT
)
COUNTY OF Colleton) 2010GS1500849

At a Court of General Sessions, convened on January 24, 2011, the Grand Jurors of Colleton County present upon their oath:

Sex / Criminal sexual conduct - First degree

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, Jessica Fredericks, and the victim did submit to sexual battery while also the victim of forcible confinement, kidnapping, robbery, extortion, burglary or any other similar offense or act, to wit; the Defendant did lure the mentally challenged victim into his home by false pretense and did prevent her from leaving; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Isaac M. Stone
Solicitor

TRUE BILL

WITNESSES

J. Taylor

J. Scott, CCSO

ARREST WARRANT NUMBERS

M103371

August 27, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1/24/2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2010GS1500849

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

January Term 2011

THE STATE

vs.

Leslie Twyman

Indictment for

Sex / Criminal sexual conduct - First degree

SC Code: 16-03-0652
CDR Code:0160

COLLETON COUNTY
GENERAL SESSIONS COURT
2011 JAN 24 PM 3:25

STATE OF SOUTH CAROLINA)
)
COUNTY OF Colleton)

INDICTMENT

2010GS1500849

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Colleton County present upon their oath:

Sex / Criminal sexual conduct - Third degree

That in Colleton County, South Carolina, on or about August 21, 2010, the Defendant, Leslie Twyman, did commit a sexual battery upon the victim, Jessica Fredericks, with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless where aggravated force or aggravated coercion was not used, to wit: the Defendant did forcefully penetrate the victim with his penis; all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Isaac M. Stone
Solicitor

TRUE BILL